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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Second Amended  
Statement of Issues Against:

**STACEY CHARESSE SILVA**  
**Pharmacy Technician Registration**

Respondent.

Case No. 6006

OAH No. 2018070404

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

**FINDINGS OF FACT**

1. On or about November 14, 2018, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Second Amended Statement of Issues No. 6006 against Stacey Charesse Silva (Respondent) before the Board of Pharmacy.

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1 11. California Government Code section 11520(a) states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense . . . or to appear at  
3 the hearing, the agency may take action based upon the respondent's express  
4 admissions or upon other evidence and affidavits may be used as evidence without  
any notice to respondent . . . .

5 12. Pursuant to its authority under Government Code section 11520, the Board finds  
6 Respondent is in default. The Board will take action without further hearing based upon the  
7 allegation set forth in the Second Amended Statement of Issues and Respondent's failure to  
8 establish entitlement to issuance of a license.

9  
10 **DETERMINATION OF ISSUES**

11 1. Based on the foregoing findings of fact, Respondent Stacey Charesse Silva has  
12 subjected her application for a Pharmacy Technician Registration to denial.

13 2. Service of Second Amended Statement of Issues No. 6006 and related documents was  
14 proper and in accordance with the law.

15 3. The agency has jurisdiction to adjudicate this case by default.

16 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure  
17 based upon the following violations alleged in the Second Amended Statement of Issues:

18 a. Conviction of a Substantially Related Crime – Bus. & Prof. Code §§ 480,  
19 subdivisions (a)(1), (a)(3)(A), 490 and 4301, subdivision (l) in conjunction with California Code  
20 of Regulations, title 16, section 1770;

21 b. Violating Law Regulating Controlled Substances/Dangerous Drugs – Bus. &  
22 Prof. Code §§ 480, subdivision (a)(3), and 4301, subdivision (j);

23 c. Misrepresentation in License Application – Bus. & Prof. Code §§ 480,  
24 subdivision (d) and 4301, subdivision (g);

25 d. Possessing and/or Furnishing Prescription Drugs – Bus. & Prof. Code §§ 480,  
26 subdivision (a)(3), 4301, subdivision (o), 4059 and / or 4060;

27 e. Acts Involving Dishonesty, Fraud or Deceit – Bus. & Prof. Code § 480,  
28 subdivision (a)(2);

1 f. Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption –  
2 Bus. & Prof. Code § 480, subdivision (a)(3) and section 4301, subdivision (f);

3 g. Acts Warranting Denial of Licensure – Bus. & Prof. Code § 480, subdivisions  
4 (a)(3)(A) and (a)(3)(B).

5  
6 **ORDER**

7 IT IS SO ORDERED that the application of Respondent Stacey Charesse Silva is hereby  
8 denied.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
10 written motion requesting that the Decision be vacated and stating the grounds relied on within  
11 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
12 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

13  
14 This Decision shall become effective on February 27, 2019.

15 It is so ORDERED on January 28, 2019.

16 BOARD OF PHARMACY  
17 DEPARTMENT OF CONSUMER AFFAIRS  
18 STATE OF CALIFORNIA

19 

20 By \_\_\_\_\_  
21 Victor Law, R.Ph.  
22 Board President

23 DOJ docket number: LA2017603190  
24 63058995.DOCX

25 Attachment:

26 Exhibit A: Second Amended Statement of Issues No. 6006.

27 Exhibit B: Office of Administrative Hearings Findings and Declaration of Default; Order  
28 of Remand.

Exhibit A

Second Amended Statement of Issues No. 6006

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2 SHAWN P. COOK  
Supervising Deputy Attorney General  
3 LANGSTON M. EDWARDS  
Deputy Attorney General  
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5 Los Angeles, CA 90013  
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6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Second Amended  
Statement of Issues Against:

Case No. 6006

12 **STACEY CHARESSE SILVA**

13 Pharmacy Technician Registration Applicant

**SECOND AMENDED STATEMENT OF  
ISSUES**

14 Respondent.  
15

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Second Amended Statement of Issues  
22 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of  
23 Consumer Affairs (Board).

24 2. On or about March 28, 2016, the Board received an application for a Pharmacy  
25 Technician Registration from Stacey Charesse Silva (Respondent). On or about March 25, 2016,  
26 Stacey Charesse Silva certified under penalty of perjury to the truthfulness of all statements,  
27 answers, and representations in the application. The Board denied the application on  
28 September 2, 2016.

1 JURISDICTION

2 3. This Second Amended Statement of Issues is brought before the Board of Pharmacy  
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5  
6 STATUTORY PROVISIONS

7 4. Section 480 states, in pertinent part:

8 “(a) A board may deny a license regulated by this code on the grounds that the applicant  
9 has one of the following:

10 (1) Been convicted of a crime. A conviction within the meaning of this section means a  
11 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
12 board is permitted to take following the establishment of a conviction may be taken when the  
13 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
14 an order granting probation is made suspending the imposition of sentence, irrespective of a  
15 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

16 (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
17 benefit himself or herself or another, or substantially injure another.

18 (3) (A) Done any act that if done by a licentiate of the business or profession in question,  
19 would be grounds for suspension or revocation of license.

20 (B) The board may deny a license pursuant to this subdivision only if the crime or act is  
21 substantially related to the qualifications, functions, or duties of the business or profession for  
22 which application is made.

23 (b) Notwithstanding any other provision of this code, a person shall not be denied a  
24 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
25 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
26 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
27 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
28 the rehabilitation of a person when considering the denial of a license under subdivision (a) of



1 Section 482.

2 (c) Notwithstanding any other provisions of this code, a person shall not be denied a  
3 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,  
4 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been  
5 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof  
6 of the dismissal.

7 (d) A board may deny a license regulated by this code on the ground that the applicant  
8 knowingly made a false statement of fact that is required to be revealed in the application for the  
9 license.”

10 5. Section 490 states, in pertinent part:

11 “(a) In addition to any other action that a board is permitted to take against a licensee, a  
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
14 or profession for which the license was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise any authority to  
16 discipline a licensee for conviction of a crime that is independent of the authority granted under  
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
18 of the business or profession for which the licensee’s license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
20 conviction following a plea of nolo contendere. An action that a board is permitted to take  
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
23 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
24 1203.4 of the Penal Code.”

25 6. Section 492 states:

26 “Notwithstanding any other provision of law, successful completion of any diversion  
27 program under the Penal Code, or successful completion of an alcohol and drug problem  
28 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of

1 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
3 division, from taking disciplinary action against a licensee or from denying a license for  
4 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
5 record pertaining to an arrest.

6 This section shall not be construed to apply to any drug diversion program operated by any  
7 agency established under Division 2 (commencing with Section 500) of this code, or any  
8 initiative act referred to in that division.”

9 7. Section 4059 provides that a person may not furnish any dangerous drug, except  
10 pursuant to a valid prescription.

11 8. Section 4060 states:

12 “No person shall possess any controlled substance, except that furnished to a person upon  
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse  
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
21 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
22 labeled with the name and address of the supplier or producer.

23 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a  
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
25 devices.”

26 9. Section 4301 states, in pertinent part:

27 “The board shall take action against any holder of a license who is guilty of unprofessional  
28 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is

1 not limited to, any of the following:

2 ...

3 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
4 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
5 whether the act is a felony or misdemeanor or not.

6 (g) Knowingly making or signing any certificate or other document that falsely represents  
7 the existence or nonexistence of a state of facts.

8 ...

9 (j) The violation of any of the statutes of this state, of any other state, or of the United  
10 States regulating controlled substances and dangerous drugs.

11 ...

12 (l) The conviction of a crime substantially related to the qualifications, functions, and  
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
15 substances or of a violation of the statutes of this state regulating controlled substances or  
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other  
17 cases, the record of conviction shall be conclusive evidence only of the fact that the conviction  
18 occurred. The board may inquire into the circumstances surrounding the commission of the crime,  
19 in order to fix the degree of discipline or, in the case of a conviction not involving controlled  
20 substances or dangerous drugs, to determine if the conviction is of an offense substantially related  
21 to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of  
22 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
23 meaning of this provision. The board may take action when the time for appeal has elapsed, or the  
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
28 indictment.

1 ...  
2 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
3 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
4 federal and state laws and regulations governing pharmacy, including regulations established by  
5 the board or by any other state or federal regulatory agency. . . .”

6  
7 **REGULATORY PROVISION**

8 10. California Code of Regulations, title 16, section 1770, states:

9 “For the purpose of denial, suspension, or revocation of a personal or facility license  
10 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
11 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
12 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
13 licensee or registrant to perform the functions authorized by his license or registration in a manner  
14 consistent with the public health, safety, or welfare.”

15  
16 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

17 11. Adderall, brand name of dextroamphetamine/amphetamine, is a Schedule II  
18 controlled substance pursuant to Health and Safety Code section 11055(d)(1), and a dangerous  
19 drug pursuant to section 4022.

20 12. Marijuana is a Schedule I controlled substance under State and federal law (Health &  
21 Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug pursuant to section  
22 4022

23 13. Methamphetamine is a Schedule II controlled substance pursuant to Health and  
24 Safety Code section 11055(d)(2), and a dangerous drug pursuant to section 4022.

25 14. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code  
26 section 11057(d)(1), and a dangerous drug pursuant to section 4022.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of a Substantially Related Crime)

3 15. Respondent's application is subject to denial under sections 480, subdivisions (a)(1),  
4 (a)(3)(A), 490 and 4301, subdivision (l) in conjunction with California Code of Regulations, title  
5 16, section 1770, in that Respondent has been convicted of a crime substantially related to the  
6 qualifications, functions or duties of a pharmacy technician. Specifically, on September 11, 2018,  
7 Respondent was convicted of one misdemeanor count of violating Penal Code section 530.5  
8 subdivision (c)(1) [identity theft] in the criminal proceeding entitled *The People of the State of*  
9 *California v. Stacey Charesse Silva* (Super. Ct. L.A. County, 2018, No. 8GD03253). The court  
10 sentenced Respondent to serve 9 days in jail and placed on three (3) years' probation with terms  
11 and conditions. Respondent was ordered to pay fines, fees and restitution.

12 The circumstances surrounding the conviction are that on or about September 7, 2018,  
13 Glendale Police Officers contacted the Respondent near a Popeye's restaurant parking lot located  
14 at 2900 E. Colorado Blvd. Officers asked Respondent if a bag found in close proximity belonged  
15 to her, which Respondent denied. Upon being searched as abandoned property, officers located  
16 "several manufactured and re-encoded access cards, including cards in [Respondent's] name."  
17 The bag also contained syringes and a white crystalline substance later identified as  
18 approximately 2.27 grams of methamphetamine. Upon a search of Respondent's vehicle, officers  
19 also found a credit card embosser on the floorboard, in plain view. Upon further search, officers  
20 also identified "blank card stock (with magnetic strip), re-encoded access cards, card  
21 reader/writer software with instructions and a card reader/writer in the Respondent's vehicle.  
22 Officer determined that cards in Respondent's possession belonged to others who did not know  
23 the Respondent or provide Respondent with permission to possess the cards. Respondent was  
24 subsequently arrested for violating Penal Code § 530.5(a)[obtaining personal information of  
25 another to obtain credit, etc.], Penal Code § 484(a)[committing forgery for access card to  
26 defraud], Penal Code § 484(c)[bearing false identification for access card] and Health and Safety  
27 Code § 11377(a)[possession of controlled substance].

28 //



1 two small round white pills marked "Mylan 4" (Alprazolam), plastic bags containing an off white  
2 crystal substance resembling methamphetamine and digital scales commonly used in the sales of  
3 narcotics. Officers also found four (4) Visa gift cards which had been re-encoded with different  
4 account numbers to allow for fraudulent use. Respondent was subsequently charged with  
5 violation of Health and Safety Code section 11377 [possessing a controlled substance], a  
6 misdemeanor in the criminal proceeding entitled *The People of the State of California v. Stacey*  
7 *Charesse Silva* (Super. Ct. L.A. County, 2018, No. 8GD00892). Respondent's sentence was  
8 suspended for one (1) year pending Respondent's enrollment and completion of a diversion  
9 program pursuant to Penal Code section 1000.

10  
11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Misrepresentation in License Application)**

13 17. Respondent's application is subject to denial under sections 480, subdivision (d) and  
14 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about March 25,  
15 2016, Respondent knowingly made a false statement of fact required to be revealed in her  
16 application for licensure by certifying under penalty of perjury to accuracy of all statements in the  
17 application and answering "No" to question No. 2, "Have you previously engaged in the illegal  
18 use of controlled substances?" Complainant refers to and by this reference incorporates the  
19 allegations set forth above in paragraph 16, as though set forth fully herein.

20  
21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Violating Pharmacy Law -- Possessing and/or Furnishing Prescription Drugs)**

23 18. Respondent's application is subject to denial under sections 480, subdivision (a)(3),  
24 4301, subdivision (o), 4059 and / or 4060 in that Respondent possessed and / or furnished  
25 dangerous drugs, without a valid prescription. Complainant refers to and by this reference  
26 incorporates the allegations set forth above in paragraph 16, as though set forth fully herein.

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**FIFTH CAUSE FOR DENIAL OF APPLICATION**

**(Acts Involving Dishonesty, Fraud, or Deceit)**

19. Respondent's application is subject to denial under sections 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself and / or substantially injure another. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15, 16e and 17, as though set forth fully herein.

**SIXTH CAUSE FOR DENIAL OF APPLICATION**

**(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

20. Respondent's application is subject to denial under sections 480, subdivision (a)(3) and section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 17, inclusive, as though set forth fully herein.

**SEVENTH CAUSE FOR DENIAL OF APPLICATION**

**(Acts Warranting Denial of Licensure)**

21. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and profession in question would be grounds for discipline of her license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 17, inclusive, as though set forth fully herein.

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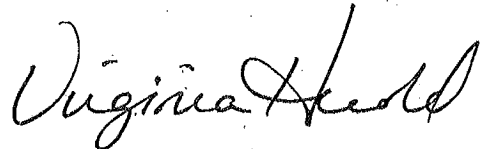


PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Stacey Charesse Silva for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 17/14/18



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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