

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Statement of Issues
Against:

ERIKA CORTEZ

Respondent.

Case No. 6483
OAH No. 2019030963
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about December 6, 2018, Virginia Herold, in her former capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Statement of Issues No. 6483 against Erika Cortez (Respondent) before the Board.
2. On or about November 15, 2017, Respondent filed an application dated November 13, 2017 with the Board of Pharmacy to obtain a Pharmacy Technician license.
3. On or about April 9, 2018, the Board issued a letter denying Respondent's application for a Pharmacy Technician license. On or about June 4, 2018, Respondent appealed the Board's denial of her application and requested a hearing.
4. On or about December 14, 2018, an employee of the Department of Justice served by certified and first class Mail a copy of Statement of Issues No. 6483, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and

1 11507.7 to Respondent's address on the application form, which was and is: 1081 Central Ave.
2 Hollister, CA 95023. A copy of the Statement of Issues is attached as exhibit A, and is
3 incorporated herein by reference.

4 5. Service of the Statement of Issues was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 6. A Notice of Hearing was served by certified and first class mail to Respondent's
7 address on the application form. The Notice of Hearing informed Respondent that an
8 administrative hearing in this matter was scheduled for April 18, 2019.

9 7. The matter was called for hearing at the date, time and location set forth in the Notice
10 of Hearing. The assigned Administrative Law Judge found that the service of the Notice of
11 Hearing on Respondent was proper. There was no appearance by or on behalf of Respondent. A
12 default was declared and on motion of counsel for Complainant, the matter was remanded to the
13 Board under Government Code section 11520.

14 8. Government Code section 11506, subdivision (c) states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense . . . and the notice shall be deemed a specific denial of all
17 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
18 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
19 discretion may nevertheless grant a hearing.

18 9. Government Code section 11520, subdivision (a) states, in pertinent part:

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

22 10. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing based upon the
24 allegations set forth in the Statement of Issues and Respondent's failure to establish entitlement to
25 issuance of a license.

26 **DETERMINATION OF ISSUES**

27 1. Based on the foregoing findings of fact, Respondent Erika Cortez has subjected her
28 application for Pharmacy Technician license to denial.

1 2. Service of Statement of Issues No. 6483 and related documents was proper and in
2 accordance with the law.

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

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

6 a. In violation of Business and Professions Code section 480, subdivision (a)(1),
7 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
8 and duties of a licensed pharmacy technician. Specifically, on or about September 14, 2017, in
9 San Benito County Superior Court Case No. CR-17-00857, Respondent was convicted of a
10 misdemeanor violation of Penal Code section 148.5, subdivision (a) (falsely reporting a criminal
11 offense). The conviction stemmed from Respondent falsely accusing her boyfriend of stealing a
12 car.

13 b. In violation of Business and Professions Code section 480, subdivision (d),
14 Respondent knowingly made a false statement of fact that is required to be revealed in the license
15 application. Specifically, in her November 13, 2017 application, Respondent falsely asserted that
16 she had never been convicted of a crime.

17 c. The act described in paragraph (b) above constitutes a violation of Business and
18 Professions Code section 480, subdivision (a)(2), in that Respondent committed an act involving
19 dishonesty, fraud, and deceit with the intent to intentionally benefit herself.

20 d. The acts described in paragraphs (a) and (b) above constitute a violation of
21 Business and Professions Code sections 480, subdivision (a)(3)(A) and 4301, subdivisions (f) and
22 (l), in that Respondent committed acts that, if done by a licensed pharmacy technician, would be
23 grounds for license suspension or revocation.

24 ///

25 ///

26 ///

27

28

ORDER

IT IS SO ORDERED that the application of Respondent Erika Cortez is hereby denied.

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

This Decision shall become effective at 5:00 p.m. on July 2, 2019. It is so ORDERED on June 3, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By:

Victor Law, R.Ph.
Board President

DOJ docket number:SF2018200961
21421994.DOCX

Attachments:

Exhibit A: Statement of Issues No.6483

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

Exhibit A

Statement of Issues No. 6483

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
4 State Bar No. 238484
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3550
6 Facsimile: (415) 703-5480
E-mail: Amber.Wipfler@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

13 **ERIKA CORTEZ**

14 Respondent.

Case No. 6483

STATEMENT OF ISSUES

15 Complainant alleges:

16 **PARTIES**

17 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

19 2. On or about November 15, 2017, the Board of Pharmacy, Department of
20 Consumer Affairs (Board) received an application for a pharmacy technician license from
21 (Respondent). On or about November 13, 2017, Respondent certified under penalty of perjury to
22 the truthfulness of all statements, answers, and representations in the application. The Board
23 denied the application on April 9, 2018.

24 **JURISDICTION**

25 3. This Statement of Issues is brought before the Board under the authority of the
26 following laws. All section references are to the Business and Professions Code unless otherwise
27 indicated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Code Section 480 states:

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

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

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

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

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

...

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

5. Code section 4301 states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

...

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

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action . . . irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea or guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

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

For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and
2 Professions Code, a crime or act shall be considered substantially related to the
3 qualifications, functions or duties of a licensee or registrant if to a substantial degree
4 it evidences present or potential unfitness of a licensee or registrant to perform the
5 functions authorized by his license or registration in a manner consistent with the
6 public health, safety, or welfare.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FACTUAL ALLEGATIONS

7. On or about March 4, 2017, Respondent reported to the Hollister Police Department that her boyfriend had stolen her mother's car. The responding officer completed a stolen vehicle report, which Respondent signed under penalty of perjury.

8. On or about March 9, 2017, Respondent contacted the Hollister Police Department and requested that her mother's vehicle be removed from the Stolen Vehicle System. Respondent told the responding officer that she and her boyfriend had been arguing, and that she reported the car as stolen because she "wanted to get him in trouble."

9. On or about September 14, 2017, in the Superior Court of San Benito County, Case No. CR-17-00857, Respondent was convicted, upon her plea of no contest, of a misdemeanor count of falsely reporting a criminal offense (Pen. Code, § 148.5, subd. (a)). Respondent was sentenced to 16 days in jail and one year of probation, and ordered to pay fines and fees.

10. On or about November 13, 2017, Respondent submitted a pharmacy technician application to the Board. The application contained a number of professional fitness questions, including the following: "Have you ever been convicted of, or pleaded guilty or nolo contend[re]/no contest to, any crime, in any state, the United States or its territories, a military court, or any foreign country?" Respondent falsely answered "no," then certified under penalty of perjury to the truth and accuracy of all statements in the application.

FIRST CAUSE FOR DENIAL

(Criminal Conviction)

11. Respondent's application is subject to denial under Code section 480, subdivision (a)(1) in that, as described in paragraphs 7-9 above, she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician.

///

1 **SECOND CAUSE FOR DENIAL**

2 (Acts of Dishonesty, Fraud, and Deceit)

3 12. Respondent's application is subject to denial under Code section 480, subdivision
4 (a)(2) in that, as described in paragraphs 7-10 above, she committed acts involving dishonesty,
5 fraud, and deceit with the intent to intentionally benefit herself.

6 **THIRD CAUSE FOR DENIAL**

7 (Acts That Are Grounds for License Suspension/Revocation)

8 13. Respondent's application is subject to denial under Code sections 480, subdivision
9 (a)(3)(A) and 4301, subdivisions (f) and (l), in that, as described in paragraphs 7-10 above, she
10 committed acts that, if done by a licensed pharmacy technician, would be grounds for license
11 suspension or revocation.

12 **FOURTH CAUSE FOR DENIAL**

13 (False Statement of Fact on License Application)

14 14. Respondent's application is subject to denial under Code sections 480, subdivision
15 (d), in that, as described in paragraphs 7-10 above, she knowingly made a false statement of fact
16 that is required to be revealed in the license application.

17 **PRAYER**

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

- 20 1. Denying the application of Erika Cortez for a pharmacy technician license;
21 2. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 12/6/18


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

SF2018200961
21291051.docx