

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

In the Matter of the Statement of Issues  
Against:

MARCELA SANTAMARIA,

Pharmacy Technician Registration Applicant

Respondent.

Case No. 6558

OAH No. 2018120689

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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

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**PROPOSED DECISION**

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 20, 2019, in Los Angeles.

Thomas L. Rinaldi, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Marcela Santamaria (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

*Jurisdiction*

1. On February 15, 2018, the Board received respondent's December 1, 2017 application for a pharmacy technician registration (application). The Board denied the application on July 18, 2018. By letter dated September 4, 2018, respondent appealed the denial of her application.

2. On November 7, 2018, complainant filed the Statement of Issues in her official capacity.

### *Criminal Conviction*

3. On May 21, 2013, in the United States District Court, Eastern District of California, Case No. 2:11-cr-0096-JAM, respondent pled guilty and was convicted of violating Title 21,<sup>1</sup> United States Code, section 841, subdivision (a)(1) (conspiracy to distribute over 500 grams of methamphetamine), a Class A felony. The court ordered Respondent to serve 49 months in prison and placed her on 60 months of supervised release in 2014, with terms and conditions including paying a \$100 special assessment, submitting to drug testing, and registering as a drug offender. Respondent is scheduled to remain on supervised release until September 1, 2019.

4. The circumstances surrounding the conviction are that between May 13, 2010, and February 11, 2011, Respondent conspired with others to knowingly and intentionally distribute over 500 grams of methamphetamine.<sup>2</sup> Respondent accepted money in exchange for transporting controlled substances in her car to various locations throughout the United States, and she and others were knowingly responsible for the possession and distribution of well over 1,500 grams of methamphetamine. Respondent was a minor participant in the conspiracy. She cooperated with the government throughout its prosecution of the case.

### *Respondent's Evidence*

5. Respondent is 47 years old and a single parent. She has two adult daughters, a 12-year-old son, and grandchildren. From 2000 to 2009, respondent worked with the Child Identification Program, making identification cards used to assist in locating a missing child. She subsequently worked as a prep cook, restaurant owner, and sanitation specialist.

6. Prior to her conviction, respondent had “never even had a traffic ticket.” Respondent emphasized that she is not a drug addict and does not sell drugs. Respondent made “a big mistake” by “being around people that [she] knew were doing things they shouldn’t be doing” including “selling and moving drugs.” She regrets associating with these individuals, who had been friends of her son’s father since childhood. Respondent has cut all ties to these individuals.

7. In a letter to the Bureau dated March 19, 2019, respondent states that, “I know that what I did was wrong and I have paid for my mistake. . . . I know that being in that kind of life didn’t took [*sic*] me to where I really wanted in life. I know for fact [*sic*] that I am a new person after that mistake and that I have completely changed. I am no longer that person nor living the life that I got involved with in the past.” (Exhibit F.) However, at the

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<sup>1</sup> In the Statement of Issues, complainant erroneously alleged that respondent violated Title 18 of the United States Code. (Exhibit 1, p. 4, line 25, and p. 5, line 22.)

<sup>2</sup> Methamphetamine is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Health and Safety Code section 4022.

hearing, respondent stated that the factual basis for her guilty plea was not true. She asserted that she “wasn’t involved but had to say I was to get sentenced.” Respondent’s attorney “had to find a way for me to get out sooner” and told her “you have to accept whatever they say [in the plea agreement.]”

8. As soon as respondent was incarcerated, she began taking classes and has continued to do so. She earned her High School Equivalency Certificate (GED) while at the Wayne Brown Federal Correctional Facility in Newark City, California. Following her release, respondent began taking classes at ABC College in Lancaster, California, and at San Joaquin Valley College. Respondent developed an interest in learning about medications after her sister was diagnosed with a cardiac issue. She sought to become a pharmacy technician because it does not require years of study.

9. In February 2018 and March 2018, respondent worked as an intern at two pharmacies in Lancaster and Palmdale, California, as part of her pharmacy technician training program. Between August 2018 and January 2019, respondent worked as a pharmacy clerk at a pharmacy in Lancaster, California. Respondent is not currently working in a pharmacy. A pharmacy technician registration would permit respondent to have unrestricted access to dangerous drugs and controlled substances.

10. Respondent submitted a document from the U.S. Probation Office noting her “favorable adjustment while on probation.” As a result, she is no longer required to see a probation officer. Instead, respondent submits “online monthly supervision reporting.” (Exhibit B.)

11. Ana Santamaria, respondent’s daughter, testified on her mother’s behalf at hearing. She described her mother as “a go-getter” who is “always there for her family” and “not the person” [depicted in the criminal indictment].

12. Respondent submitted nine character reference letters from individuals who strongly support her application. They acknowledge that respondent made a “mistake,” but assert that she has learned from her experience and deserves a second chance. These individuals describe respondent as a resilient, caring, intelligent woman who is a mentor and role-model to many people. Stacy Zachary, a retired Correctional Sergeant, met respondent when respondent was an inmate at the Wayne Brown Correctional Facility. Sergeant Zachary praises respondent as “a great worker” who “followed the rules” and excelled, stating, “I feel she was one of the few who learned from their mistakes . . .” (Exhibit D.)

## LEGAL CONCLUSIONS

1. The Board’s highest priority is protection of the public. (Business and Professions Code (Code), § 4001.1.) The purpose of an administrative proceeding such as this one is not to punish the applicant, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

2. The Board may deny an application for licensure if the applicant has been convicted of a crime or done any act that, if done by a licentiate of the occupation in question, would be grounds for suspension or revocation of the license, so long as the act or crime is substantially related to the qualifications, functions, or duties of the business or profession for which an application is made. (Code, §§ 480, subd. (a)(1) & (3), 490.) A crime or act is substantially related to the qualifications, functions, or duties of a licensee if it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770.) The Board may take action against a licensee who is guilty of unprofessional conduct. Unprofessional conduct includes committing an act involving moral turpitude, dishonesty, fraud, deceit or corruption; violating any laws regulating controlled substances and dangerous drugs; and actions or conduct that would have warranted denial of a license. (Code, §4301, subds. (f), (j), and (p).) A conviction for violating Title 21 of the United States Code is conclusive evidence of unprofessional conduct. (Code, §4301, subd. (l).)

3. Cause exists to deny respondent's application for a Pharmacy Technician registration pursuant to Code section 480, subdivision (a)(1), in that respondent was convicted of a substantially related crime. (Findings 3 and 4.)

4a. Cause exists to deny respondent's application for a Pharmacy Technician registration pursuant to Code sections 4301, subdivision (p), and 480, subdivisions (a)(3)(A), and (a)(3)(B), in that respondent committed a substantially related crime or acts, which if done by a licensee would be grounds for suspension or revocation of a license, in violation of Code sections 4301, subdivision (l) and 490, and in conjunction with California Code of Regulations, title 16, section 1770. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidences her present or potential unfitness to perform the functions authorized by a pharmacy technician registration in a manner consistent with the public health, safety, or welfare. (Findings 3 and 4.)

4b. Cause exists to deny respondent's application for a Pharmacy Technician registration pursuant to Code sections 4301, subdivision (p), and 480, subdivisions (a)(3)(A), and (a)(3)(B), in that respondent committed acts which if done by a licensee would be grounds for suspension or revocation of a license. Respondent violated Title 21 United States Code section 841(a)(1), in violation of Code section 4301, subdivision (j), when she conspired with others to knowingly and intentionally distribute over 500 grams of methamphetamine. (Findings 3 and 4.)

5. Respondent's crime is substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

6. The Board has established guidelines for assessing rehabilitation in connection with determining whether an applicant should be granted licensure and, if so, under what conditions. California Code of Regulations, title 16, section 1769, subdivision (b), states:

When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

7. Nearly nine years have passed since the acts which led to respondent's conviction and there was no evidence of any subsequent wrongful acts or convictions. Her role in the conspiracy was minor and she cooperated fully with law enforcement during the prosecution. Respondent has consistently demonstrated good behavior while incarcerated and on supervised release, and has engaged in courses to further her education and provide her with a vocation. (Findings 4-12.)

8. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent does not appear to have taken this step. At hearing, respondent denied any role in the criminal conspiracy to distribute methamphetamines for which she was convicted. The nature of this serious crime is of particular concern since a pharmacy technician would have unrestricted access to controlled substances and dangerous drugs.

9. Respondent contends that the factual basis for her guilty plea was not true and that she admitted to wrongdoing solely to obtain a shorter sentence. (Finding 7.) Regardless of respondent's motives for entering her guilty plea in the criminal matter, the plea is conclusive evidence of respondent's guilt of the crime charged for the purposes of this administrative proceeding. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at re-litigating criminal charges which have already culminated in final judgments of conviction.

Moreover, in this instance, the fact that respondent suffered a conviction for violating Title 21 of the United States Code constitutes conclusive evidence of unprofessional conduct for purposes of obtaining a Pharmacy Technician registration. (Code, §4301, subd. (D).)

10. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks favorably on rewarding one who has achieved "reformation and regeneration" with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) However, remorse alone does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

11. Individuals have a strong incentive to obey the law while they are under the supervision of the criminal justice system. Accordingly, good behavior while on probation is of limited probative value given the coercive nature of judicial scrutiny. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In this case, respondent remains on supervised release, which is not scheduled to terminate until September 1, 2019. While respondent's compliance to date with the terms of her supervised release is encouraging, there has been no passage of time to assess respondent's rehabilitation once she has been released from the command of the criminal justice system.

12. Respondent bore the burden of proving that she is fit to hold a pharmacy technician registration. (*Bley v. Board of Dental Examiners* (1932) 120 Cal.App. 426, 430-431.) She was not able to sustain that burden at this time. Respondent has failed to demonstrate rehabilitation, which is required to ensure that she will not again engage in activities of the sort that led to her conviction and pose an unacceptable risk to public health, safety, and welfare. More time, and respondent's sincere acceptance and acknowledgment of her crime, are needed before respondent can be considered an appropriate candidate for licensure.

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ORDER

The application of respondent Marcela Santamaria for a Pharmacy Technician Registration is denied.

Dated: April 18, 2019

DocuSigned by:

*Laurie Pearlman*

LAURIE K. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings



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7 *Attorneys for Complainant*

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

13 In the Matter of the Statement of Issues  
Against:  
14 **MARCELA SANTAMARIA**  
15 Pharmacy Technician Registration Applicant  
16 Respondent.

Case No. 6558

17 **STATEMENT OF ISSUES**

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs  
23 (Board).
- 24 2. On or about February 15, 2018, the Board received an application for a Pharmacy  
25 Technician Registration from Marcela Santamaria (Respondent). On or about December 1, 2017,  
26 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
27 representations in the application. The Board denied the application on July 18, 2018.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

15 . . . .

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

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

21 “(b) Notwithstanding any other provision of this code, a person shall not be denied a  
22 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
23 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
24 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
25 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
26 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
27 Section 482.

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

6           5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license  
7 on the ground that the licensee has been convicted of a crime substantially related to the  
8 qualifications, functions, or duties of the business or profession for which the license was issued.

9           6. Section 4301 states, in pertinent part:

10           “The board shall take action against any holder of a license who is guilty of unprofessional  
11 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is  
12 not limited to, any of the following:

13           ...

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

17           ....

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

20           ....

21           “(l) The conviction of a crime substantially related to the qualifications, functions, and  
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
24 substances or of a violation of the statutes of this state regulating controlled substances or  
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
27 The board may inquire into the circumstances surrounding the commission of the crime, in order  
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
4 of this provision. The board may take action when the time for appeal has elapsed, or the  
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
9 indictment.”

10 **7. CONTROLLED SUBSTANCE**

11 “Methamphetamine,” is a Schedule II controlled substance as defined in Health and Safety  
12 Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022.

13 **REGULATORY PROVISIONS**

14 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Convictions of Substantially Related Crimes)**

23 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
24 that Respondent was convicted of a substantially related crime, as follows: On or about May 21,  
25 2013, after pleading guilty, Respondent was convicted of one felony count of violating Title 18,  
26 United States Code section 841, subdivision (a)(1) [conspiracy to distribute over 500 grams of  
27 methamphetamine] in the criminal proceeding entitled *United States of America v. Marcela*  
28 *Santamaria* (U.S. Dist. Ct. E.D.C., 2018, No. 2:11-cr-00096-07). The court ordered Respondent

1 to serve 49 months in prison and placed her on 60 months' probation, with terms and conditions.  
2 The circumstances surrounding the conviction are that on a date unknown but no later than on or  
3 about May 13, 2010, and continuing to on or about February 11, 2011, Respondent conspired  
4 with others to knowingly and intentionally distribute over 500 grams of a mixture and substance  
5 containing a detectable amount of methamphetamine. Respondent admitted to accepting money  
6 in exchange for transporting controlled substances in her car to various locations throughout the  
7 United States and that she and others were responsible for the possession and distribution of well  
8 over 1,500 grams of methamphetamine.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Acts Warranting Denial of Licensure)**

11 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and  
12 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a  
13 licentiate of the business and profession, would be grounds for suspension or revocation of her  
14 license as follows:

15 a. Respondent was convicted of a crime substantially related to the qualifications,  
16 functions, or duties of a pharmacy technician which to a substantial degree evidence her present  
17 or potential unfitness to perform the functions authorized by her license in a manner consistent  
18 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490,  
19 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
20 and by this reference incorporates, the allegations set forth above in paragraph 11, as though set  
21 forth fully.

22 b. Respondent violated Title 18, United States Code section 841, subdivision (a)(1) in  
23 violation of section 4301, subdivision (j) when she conspired with others to knowingly and  
24 intentionally distribute over 500 grams of methamphetamine. Complainant refers to, and by this  
25 reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully.

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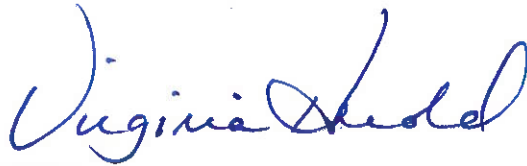
**PRAYER**

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 Marcela Santamaria for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

11/7/18



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

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