

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

In the Matter of the Statement of Issues Against:

VALERIE COMPIAN,

Applicant/Respondent.

Case No. 3043

OAH No. L2007080046

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the Board of Pharmacy as its Decision in the above-entitled matter.

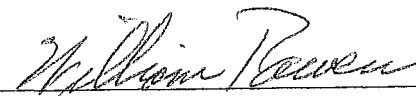
This Decision shall become effective December 20, 2007.

IT IS SO ORDERED.

Date: November 20, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS

Board President

BEFORE THE
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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 18, 2007, in San Diego, California.

Amanda Dodds, Legal Analyst, Office of the Attorney General, State of California, represented complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California.

Applicant/respondent Valerie Compian represented herself and was present throughout the administrative proceeding.

On September 18, 2007, the matter was submitted.

FACTUAL FINDINGS

The Application

1. On April 12, 2005, Valerie Compian (Compian or respondent) signed an application for registration as a pharmacy technician that was filed with the Board of Pharmacy (the Board). In that application, Compian provided identifying and other information including an August 2002 conviction for being under the influence of methamphetamine and a September 2002 conviction for petty theft.

By letter dated March 15, 2006, the Board's (then) executive officer advised Compian that her application was denied and advised Compian of her right to appeal.

Jurisdictional Matters

2. On June 25, 2007, complainant Virginia Herold, the Board's executive officer, signed the statement of issues. The statement of issues alleged that Compian was unlawfully under the influence of methamphetamine in August 2002 and in September 2002, that Compian was convicted twice of being under the influence of controlled substances and violated the terms of the diversion program related to one conviction, that Compian was convicted of petty theft, and that Compian's misconduct and convictions established grounds to deny Compian's application for registration as a pharmacy technician.

The statement of issues and other required documents were served on Compian.

The matter was set for an administrative hearing. On August 7, 2007, the record in the administrative hearing was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

Registration Information and History

3. The Board issues a registration to pharmacy technicians based on the acquisition of relatively minimal education and/or training requirements. No examination is required for the issuance of a pharmacy technician registration. Pharmacy technicians are not independent practitioners, and they must work under the supervision of registered pharmacists.

Methamphetamine

4. Joan Coyne, Pharm. D., testified about methamphetamine, addiction to methamphetamine, and the relationship between the use of methamphetamine and the qualifications, functions, and duties of a pharmacy technician.

5. Notice is taken that methamphetamine is classified as a Schedule II substance by the Drug Enforcement Administration. It is available by prescription under the trade name Desoxyn. While there is technically no difference between the laws regarding the prescription of methamphetamine and other controlled stimulants, most medical professionals are averse to prescribing it due to its notoriety.

6. According to Coyne, methamphetamine is a drug which directly enters the brain after administration and triggers a "high" unlike that caused by any other drug. The effects of methamphetamine can last up to eight to ten hours. Users develop a tolerance, and methamphetamine is prone to abuse and addiction. Coyne testified that methamphetamine addicts experience a 90 percent recidivism rate, even with formal treatment. Insidious and irreversible brain damage may be caused by the use of methamphetamine. Withdrawal symptoms may include paranoia, anger, and depression.

7. Coyne testified that unlike registered pharmacists, the board does not have any method by which the board can randomly test pharmacy technicians to determine if such registrants have been used illegal or dangerous drugs. There simply is no budget for that.

8. Coyne, who is responsible for investigating applicants and registrants who have been involved in drug diversion or the unlawful self-administration of dangerous drugs, testified that pharmacy technicians have almost unlimited access to controlled substances in the pharmacies in which they work, that many pharmacies are unable or unwilling to exercise adequate supervision over pharmacy technicians, that there is a history of, and a growing caseload involving, pharmacy technicians with a history of addiction to methamphetamine.

When asked if Compian should be registered as a pharmacy technician, Coyne, who admittedly knew nothing about Compian that was not contained in the criminal court records, testified, "Not knowing what I know about meth."

Compian's Arrests and Convictions

9. On August 21, 2002, shortly before midnight, in Border Park in Corona, California, Corona Police Officer Jurado encountered Compian and her (then) boyfriend, who had been detained by another officer. Compian's eyes were dilated. When asked when she last used methamphetamine, Compian said a couple of hours before, that she was addicted to methamphetamine, and she was trying to quit. Compian was cited for being under the influence. The police department obtained a blood specimen was obtained and it was positive for the presence of methamphetamine. Compian was released from custody after she became sober and was ordered to appear in court.

10. On January 14, 2003, Compian pled guilty to violating Health and Safety Code section 11550, subdivision (a) (unlawfully being under the influence of a controlled substance), a misdemeanor, in the Superior Court of California, County of Riverside, in Case No. COM038303. Judgment was deferred under Penal Code section 1000 and Compian was directed to enroll in and complete a drug diversion program within 18 months.

Compian enrolled in a drug diversion program on February 6, 2003, which required weekly meetings, counseling, and random drug testing. On May 7, 2003, Compian's drug diversion counselor filed a progress evaluation with the court stating, "Client has not been heard from since 03-17-03 – client is terminated from the program." A bench warrant was issued for Compian's arrest.

On September 20, 2004, Compian was convicted on her plea of guilty of violating Health and Safety Code section 11550, subdivision (a) (unlawfully being under the influence of a controlled substance), a misdemeanor, in the Superior Court of California, County of Riverside, in Case No. COM038303.

On September 20, 2004, Compian was placed on three years summary probation. Terms and conditions of her probation required that she serve 90 days "straight time" in custody, pay fines and fees totaling approximately \$100, submit to drug testing as required,

and obey all laws. According to Compian, her custody was concurrent with that imposed in the conviction referred to in Factual Finding 11. Compian served six days in custody, and was then released because the jail was overcrowded.

The conviction and the conduct underlying the conviction were substantially related to the qualifications, functions, and duties of a registered pharmacy technician. It was not established that the conviction involved moral turpitude as a legal or factual matter, or that the conviction involved dishonesty, fraud or deceit with Compian's intent to substantially benefit herself.

11. On September 21, 2002, around 5:00 p.m., Compian and a female friend were present in a Wal-Mart in Corona. The friend was arrested for petty theft and Compian was detained for questioning. During the questioning, Compian admitted she smoked a "bowl of 'Speed'" earlier that day. The police arrested Compian for commercial burglary (it was alleged she was acting as a "lookout" for her friend) and for being under the influence.

12. On May 13, 2003, Compian pled guilty to violating Penal Code section 490.5 (petty theft from a merchant), a misdemeanor, and to violating Health and Safety Code section 11550, subdivision (a) (unlawfully being under the influence of a controlled substance), a misdemeanor, in the Superior Court of California, County of Riverside, in Case No. COM038386.

On May 13, 2003, Compian was placed on three years summary probation. Terms and conditions of her probation required her to spend a "moderate" period of time in custody – 20 days – on the weekender's program and to obey all laws.

The second being under the influence conviction and the conduct underlying that conviction were substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The petty theft conviction involved moral turpitude as a legal matter and that conviction necessarily involved dishonesty.

Compian's Evidence

13. Compian was born on May 27, 1981. She grew up in Southern California. She graduated from Pioneer High School in Whittier in 1999. After graduating from high school, Compian held several entry level jobs and then was promoted to a management position with Jack-in-the-Box.

14. Compian was introduced to methamphetamine by a boyfriend in 2001. Her use of methamphetamine increased and she became addicted. Compian was arrested in August 2002 for being under the influence, and again in September 2002 for the same offense. Compian failed to complete the drug diversion program required by her August 2002 arrest. By 2003, Compian was smoking meth three times a day. Sometime in 2003, Compian became tired of her lifestyle. She testified she stopped using methamphetamine on her own in 2003 and has not used methamphetamine since.

15. In summer 2003, Compian and her (then) boyfriend traveled to Guadalajara, Mexico, where they lived through winter 2004. When they returned, Compian turned herself in, served time in custody, and complied with other terms and conditions of her probation. According to Compian, her convictions were expunged under Penal Code section 1203.4, but she did not bring the orders of expungement to the hearing.

16. Compian attended and completed an eight-month vocational training course at Maric College in Riverside to gain the education, training, and experience necessary to become a registered pharmacy technician. Compian completed her internship at a Kaiser hospital in Fontana. According to Compian, Maric College advised her that her convictions would not be a hindrance to obtaining a registration. Compian did not discuss the matter with anyone from the Board.

17. Compian testified she stopped using methamphetamine sometime in 2003. She does not have a formal sobriety date. Compian does not belong to a 12-step program or to any self-help group. Since her convictions, Compian was tested once in 2006 during a job interview with Best Buy; the result of that testing was negative. Compian did not bring the result of that drug test to the hearing.

18. Compian lives with her father. She holds full-time employment as a manager of Children's Place and part-time employment as an employee at Express, both retail stores in Corona. Compian spends most of her time working. She no longer associates with the persons with whom she partied and lived when she used methamphetamine.

Compian testified she had not been cited or arrested for any offense since September 2002, although she violated the terms and conditions of her probation more recently.

Rehabilitation Criteria/Evaluation

19. The Board enacted a regulation – Title 16, California Code of Regulations, section 1769 – which sets forth certain criteria that should be considered in evaluating the rehabilitation of an applicant and his or her present eligibility for registration. These criteria include: (1) The nature and severity of the acts or offenses under consideration; (2) evidence of any acts committed subsequent to the acts or crimes under consideration; (3) the time that has elapsed since commission of such acts or crimes; (4) whether the applicant complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) evidence, if any, of rehabilitation submitted by the applicant.

20. Applying the rehabilitation criteria, Compian suffered two convictions for being under the influence of methamphetamine and one petty theft conviction within the past five years. Compian failed to complete a court-ordered drug diversion program, absconded jurisdiction, and violated probation. Compian testified that she had not used methamphetamine since 2003, that she had been continuously in school or employed since 2004, and that her convictions were expunged. No testimony or documentary evidence corroborated the testimony in rehabilitation.

21. Given the nature of the convictions, the fact they occurred within the past five years, Compian's failure to comply with the terms and conditions of criminal probation, the Board's inability to monitor her sobriety, and the lack of independent evidence available to corroborate Compian's testimony that she has overcome her methamphetamine addiction, it cannot be concluded that Compian has sufficiently rehabilitated herself to justify the granting of a pharmacy technician registration, even on a probationary basis.

LEGAL CONCLUSIONS

Registration as a Pharmacy Technician

1. Business and Professions code section 4038 defines "pharmacy technician" as "an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115."

2. Business and Professions Code section 4115 sets forth various tasks which a pharmacy technician may perform. For example, subdivision (a) provides "a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." The duties a pharmacy technician may perform are further subject to regulation.¹

3. Business and Professions Code section 4115, subdivision (e) provides:

"No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202."

4. The rules and regulations related to registered pharmacy technicians do not allow a pharmacy technician to perform any discretionary act or any act requiring the exercise of professional judgment by a registered pharmacist. (*Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993) 19 Cal.App.4th 1136, 1155-1156.)

Burden and Standard of Proof

5. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (See, *California Administrative Hearing Practice* (Cont.Ed.Bar 2d ed. 1997) The Hearing Process, §§ 7.51-7.53, pp. 365-367), and the cases cited therein.)

¹ Under title 16, California Code of Regulations, section 1793.2, "Nondiscretionary tasks" as used in Business and Professions Code section 4115, include "(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging."

Pertinent Disciplinary Statutes and Regulations

6. Business and Professions Code section 475 provides in part:

“(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

...

(2) Conviction of a crime.

...

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license . . .”

7. Business and Professions Code section 480 provides:

“(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 which 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 of the Penal Code.

...

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

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.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that . . . that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482 . . .”

8. Business and Professions Code section 482 provides in part:

“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480 . . .

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

9. Business and Professions Code section 493 provides in part:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license . . . upon the ground that the applicant . . . has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

10. Business and Professions Code section 4301 provides in part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 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.

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

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

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation . . . regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred . . .

...

(p) Actions or conduct that would have warranted denial of a license . . .”

11. Health and Safety Code section 11550, subdivision (a) provides in part:

“No person shall use, or be under the influence of any controlled substance . . . except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.”

12. Health and Safety Code section 11170 provides:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

Substantial Relationship

13. Whether the requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a “relationship,” the inherent meaning is the same. There must be a logical connection between the licensees’ conduct to their present fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. Despite the omission of an explicit requirement that there be a “substantial relationship” in a disciplinary statute, courts have concluded that the Legislature intend such a requirement. (*Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 301-303.)

14. Title 16, California Code of Regulations, section 1770 provides in part:

“For the purpose of denial . . . of a personal . . . license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential

unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

15. The substantial relationship between holding a pharmacy technician registration and the unlawful possession or use of controlled substances or dangerous drugs was established by Coyne’s testimony and is obvious – persons who illegally possess or use such substances should not be permitted to hold a position of employment that provides virtually unlimited access to controlled substances because of the high risk of diversion and abuse of those substances and the harm caused to the public as a consequence thereof. This relationship is amply demonstrated throughout the statutory scheme as well as the Board’s disciplinary guidelines.

16. Petty theft is an offense necessarily involving moral turpitude. The offense involves an element of dishonesty. (*In re Rothrock* (1944) 25 Cal. 2d 588, 590.) A petty theft conviction, too, involves a substantial relationship to the qualifications, functions, and duties of a registered pharmacy technician, who must be honest.

Rehabilitation Criteria

17. Title 16, California Code of Regulations, section 1769 provides in part:

“(a) When considering the denial of a . . . 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 . . .”

18. Rehabilitation is a state of mind. The law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal. 3d 1041, 1058.) The evidentiary significance of an individual’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal. 3d 1061, 1070.)

Cause Exists to Deny the Application

19. Cause exists under Business and Professions Code sections 490 and 4301, subdivisions (f), (h), (j), (k), (l), and (p), to deny Compian's application for registration as a pharmacy technician.

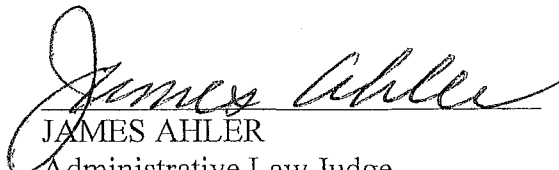
Compian's two misdemeanor under the influence of methamphetamine convictions were relatively recent, involved unprofessional conduct, and were substantially related to the qualifications, functions, and duties of a registered pharmacy technician. Compian's recent petty theft conviction involved dishonesty. Compian's convictions and her use and ensuing addiction to methamphetamine involved unprofessional conduct. Compian's effort to overcome her methamphetamine addiction is in its relative infancy. Compian was not a model probationer. Since Compian was discharged from probation, she appears to have been law abiding, and her recent personal history has not been marked by the frequent arrests often associated with methamphetamine addiction. But, Compian has no formal method by which she maintains her sobriety, and the Board lacks the resources to provide random testing of registered pharmacy technicians to ensure their sobriety. While Compian's efforts to remain sober are very encouraging, it is far too early in her recovery to conclude that Compian has become rehabilitated and will remain drug free. At this time it cannot be concluded that Compian would pose no risk of harm to the public if she were to hold a pharmacy technician registration, even on a probationary basis. Compian is encouraged to continue her recovery, to give some thought to the manner in which she can maintain and prove her continued sobriety, and to reapply after the further passage of time.

This conclusion is based on all Factual Findings and on all Legal Conclusions

ORDER

Valerie Compian's application for the issuance of a pharmacy technician registration dated April 12, 2005, that was filed with the Board of Pharmacy, is denied.

DATED: 10/10/07


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

14 In the Matter of the Statement of Issues Against:

Case No. 3043

15 VALERIE COMPIAN
22504 White Sage Street
16 Corona CA 92883

STATEMENT OF ISSUES

17 Respondent.

18
19 Complainant alleges:

20 PARTIES

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

24 2. On or about May 24, 2005, the Board of Pharmacy, Department of
25 Consumer Affairs received an application for a Pharmacy Technician License from Valerie
26 Compian (Respondent). On or about April 12, 2005, Valerie Compian certified under penalty of
27 perjury to the truthfulness of all statements, answers, and representations in the application. The
28 Board denied the application on March 15, 2006.

1 JURISDICTION

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 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 4. Section 475 of the Code states:

6 (a) Notwithstanding any other provisions of this code, the
provisions of this division shall govern the denial of licenses on the grounds of:
7 (1) Knowingly making a false statement of material fact, or
knowingly omitting to state a material fact, in an application for a license.
8 (2) Conviction of a crime.
9 (3) Commission of any act involving dishonesty, fraud or
deceit with the intent to substantially benefit himself or another, or substantially
injure another.

10 (4) Commission of any act which, if done by a licentiate of
the business or profession in question, would be grounds for suspension or
11 revocation of license.

12 (b) Notwithstanding any other provisions of this code, the
provisions of this division shall govern the suspension and revocation of licenses
on grounds specified in paragraphs (1) and (2) of subdivision (a) .

13 (c) A license shall not be denied, suspended, or revoked on the
14 grounds of a lack of good moral character or any similar ground relating to an
applicant's character, reputation, personality, or habits.

15 5. Section 480 of the Code states:

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

17 (1) Been convicted of a crime. A conviction within the
18 meaning of this section means a plea or verdict of guilty or a conviction following
a plea of nolo contendere. Any action which a board is permitted to take
19 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
20 when an order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under the provisions of Section 1203.4 of the
Penal Code.

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

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

24 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
25 the business or profession for which application is made.

26 (b) Notwithstanding any other provision of this code, no person
shall be denied a license solely on the basis that he has been convicted of a felony
if he has obtained a certificate of rehabilitation under Section 4852.01 and
27 following of the Penal Code or that he has been convicted of a misdemeanor if he
has met all applicable requirements of the criteria of rehabilitation developed by
28

1 the board to evaluate the rehabilitation of a person when considering the denial of
2 a license under subdivision (a) of Section 482.

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

6 6. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria
8 to evaluate the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section
10 480; or

11 (b) Considering suspension or revocation of a license under
12 Section 490.

13 Each board shall take into account all competent evidence of
14 rehabilitation furnished by the applicant or licensee.

15 7. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding
17 conducted by a board within the department pursuant to law to deny an
18 application for a license or to suspend or revoke a license or otherwise take
19 disciplinary action against a person who holds a license, upon the ground that the
20 applicant or the licensee has been convicted of a crime substantially related to the
21 qualifications, functions, and duties of the licensee in question, the record of
22 conviction of the crime shall be conclusive evidence of the fact that the conviction
23 occurred, but only of that fact, and the board may inquire into the circumstances
24 surrounding the commission of the crime in order to fix the degree of discipline or
25 to determine if the conviction is substantially related to the qualifications,
26 functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit,"
28 "authority," and "registration."

8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is
guilty of unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. 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.

(h) The administering to oneself, of any controlled substance, or
the use of any dangerous drug or of alcoholic beverages to the extent or in a
manner as to be dangerous or injurious to oneself, to a person holding a license
under this chapter, or to any other person or to the public, or to the extent that the
use impairs the ability of the person to conduct with safety to the public the
practice authorized by the license.

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

4 (k) The conviction of more than one misdemeanor or any felony
5 involving the use, consumption, or self-administration of any dangerous drug or
6 alcoholic beverage, or any combination of those substances.

7 (l) The conviction of a crime substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. The record
9 of conviction of a violation of Chapter 13 (commencing with Section 801) of Title
10 21 of the United States Code regulating controlled substances or of a violation of
11 the statutes of this state regulating controlled substances or dangerous drugs shall
12 be conclusive evidence of unprofessional conduct. . . .

13 (p) Actions or conduct that would have warranted denial of a
14 license.

15 9. Title 16, California Code of Regulations section 1770, states:

16 For the purpose of denial, suspension or revocation of a personal or
17 facility license. . . a crime or act shall be considered substantially related to the
18 qualifications, functions or duties of a licensee or registrant if to a substantial
19 degree it evidences present or potential unfitness of a licensee or registrant to
20 perform the functions authorized by his license or registration in a manner
21 consistent with the public health, safety, or welfare.

22 10. Title 16, California Code of Regulations section 1020, states:

23 (a) When considering the denial of a license under Section 480 of
24 the Code, the board in evaluating the rehabilitation of the applicant and his present
25 eligibility for a license, will consider the following criteria:

26 (1) The nature and severity of the act(s) or crime(s) under
27 consideration as grounds for denial.

28 (2) Evidence of any act(s) committed subsequent to the
act(s) or crime(s) under consideration as grounds for denial which also could be
considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s)
or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which 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.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Conviction on January 14, 2003, for Being Under
the Influence of a Controlled Substance on August 22, 2002)

11. Respondent's application is subject to denial under sections 480(a)(1),
480(a)(3), and 4301(l) of the Code in that she was convicted of a crime that is substantially

1 related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances
2 are as follows:

3 a. On or about January 14, 2003, in a criminal proceeding entitled
4 *People v. Valerie Compian*, Riverside County Superior Court case number COM 038303,
5 Respondent plead guilty to violating Health and Safety Code section 11552(a), being under the
6 influence of a controlled substance, a misdemeanor. Judgment was deferred and Respondent was
7 ordered to enroll in a Drug Diversion Program and pay fines and restitution. After failing to
8 complete the Drug Diversion Program, Respondent's original sentence was reinstated .

9 b. As a result of the conviction reinstatement, on or about September
10 20, 2004, Respondent was sentenced to 90 days in the county jail, payment of fines and
11 restitution, and three years summary probation.

12 c. The facts that lead to the conviction were that on or about August
13 22, 2002, Respondent and two male companions were detained by the Corona Police Department
14 at Border Park in the city of Corona. An officer administered standardized Field Sobriety Tests
15 to Respondent and determined she was under the influence of a controlled substance.
16 Respondent allegedly admitted to the police officer that she had used methamphetamine two
17 hours prior, that she was addicted to methamphetamine, and that she was trying to quit.
18 Respondent was arrested and transported to the station. Blood drawn at the station tested
19 positive for methamphetamine.
20

21 SECOND CAUSE FOR DENIAL OF APPLICATION

22 (Unprofessional Conduct - Use of a Dangerous Drug)

23 12. Respondent's application is subject to denial under sections 480(a)(3) and
24 4301(h) of the Code in that on August 22, 2002, Respondent was under the influence of
25 methamphetamine, a dangerous drug, to the extent or in a manner as to be dangerous or injurious
26 to herself or to the public. At the time of her arrest referenced in the preceding Cause for Denial,
27 Respondent admitted to the arresting officer that she was addicted to methamphetamine, and her
28 blood tested positive for methamphetamine following the arrest.

1 Methamphetamine is a Schedule II Stimulant (Health & Saf. Code § 11055(a)(2)), so classified
2 because of its high potential for abuse.

3
4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 **(Unprofessional Conduct - Violation of Statute Regulating Dangerous Drugs)**

6 13. Respondent's application is subject to denial under sections 480(a)(3) and
7 4301(j) of the Code in that she was convicted on January 14, 2003, for being under the influence
8 of methamphetamine, a controlled substance, in violation of Health and Safety Code section
9 11550(a).

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

12 **(Criminal Conviction on May 13, 2003, for Petty Theft of Retail Merchandise**
13 **and Being Under the Influence of a Controlled Substance on September 21, 2002)**

14 14. Respondent's application is subject to denial under sections 480(a)(1),
15 480(a)(3), and 4301(l) of the Code in that she was convicted of a crime that is substantially
16 related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances
17 are as follows:

18 a. On or about May 13, 2003, in a criminal proceeding entitled
19 *People v. Valerie Compian*, Riverside County Superior Court Case Number COMO38386,
20 Respondent was convicted on her plea of guilty for violation of Penal Code section 490.5 (petty
21 theft of retail merchandise), and Health and Safety Code section 11550(a) (under the influence of
22 a controlled substance), misdemeanors.

23 b. As a result of the conviction, on or about May 23, 2003,
24 Respondent was sentenced to three years formal probation, and commitment to a 20-day Work
25 Release Program to be served on consecutive weekends. Respondent failed to appear for 14 days
26 of the 20-day program. Respondent was subsequently sentenced to 40 days in the county jail to
27 be served concurrent to her sentence in case number COM038303, alleged in paragraph 10,
28 above.

1 c. The facts that lead to the conviction were that on September 21,
2 2002, at a Corona Wal-Mart, store security observed Respondent acting as a "lookout" while her
3 female companion concealed merchandise in her handbag and clothing. Both women were
4 detained by a Wal-Mart loss prevention officer after leaving the store without paying for the
5 items. Respondent allegedly admitted to a Corona Police Department officer that she had
6 consumed "speed" earlier in the day. Field Sobriety Tests were administered and the arresting
7 officer determined Respondent was under the influence of a controlled substance.

8
9 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Unprofessional Conduct - Use of a Dangerous Drug)**

11 15. Respondent's application is subject to denial under sections 480(a)(3) and
12 4301(h) of the Code in that on September 21, 2002, she was under the influence of
13 methamphetamine, a dangerous drug, to the extent or in a manner as to be dangerous or injurious
14 to herself or to the public. As set forth in the preceding Cause for Denial, Respondent admitted
15 to the arresting officer that she had ingested methamphetamine earlier in the day.
16 Methamphetamine is a Schedule II Stimulant (Health & Saf. Code § 11055(a)(2)), so classified
17 because of its high potential for abuse.

18
19 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Unprofessional Conduct - Violation of Statute Regulating Dangerous Drugs)**

21 16. Respondent's application is subject to denial under sections 480(a)(3) and
22 4301(j) of the Code in that she was convicted on May 13, 2003, for being under the influence of
23 methamphetamine, a controlled substance, in violation of Health and Safety Code section
24 11550(a).

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SEVENTH CAUSE FOR DENIAL OF APPLICATION
(Unprofessional Conduct - Conviction of More Than One
Misdemeanor Involving a Dangerous Drug)

17. Respondent's application is subject to denial under sections 480(a)(3) and 4301(k) of the Code in that she was convicted on May 13, 2003, for being under the influence of methamphetamine (Health & Saf. Code § 11550(a)), after having previously suffered a conviction for the same offense on January 14, 2003.

EIGHTH CAUSE FOR DENIAL OF APPLICATION
(Unprofessional Conduct - Petty Theft)

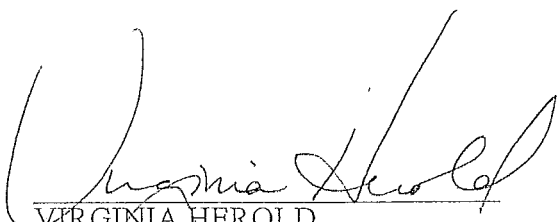
18. Respondent's application is subject to denial under sections 480(a)(3) and 4301(f) of the Code in that she was convicted on May 13, 2003, for petty theft of retail merchandise, an act involving dishonesty and deceit.

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 Respondent, Valerie Compian, for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 6/25/07



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