

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

In the Matter of the Statement of Issues
Against:

ANTON BUTRAMENKO,

Pharmacy Technician Registration Applicant

Respondent.

Case No. 6489

OAH No. 2019021060

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

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 23, 2019, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Elaine W. Yan, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer of the Board of Pharmacy (Board).

Anton Butramenko (respondent) was present and represented himself.

Complainant seeks to affirm the denial of respondent's application for a pharmacy technician license. It was established by a preponderance of the evidence that respondent was convicted in 2012 of misdemeanor grand theft from a person, which involved his threat of bodily harm to his victim. In aggravation, respondent provided a false description of the events underlying his 2012 conviction in his application, and engaged in domestic violence against his mother in 2016. Respondent presented insufficient evidence of rehabilitation to warrant overturning the Board's denial of his application.

FACTUAL FINDINGS

1. On February 21, 2018, the Board received a Pharmacy Technician Application from respondent. The Board denied the application on May 31, 2018, based on respondent's "criminal record." (Ex. 3, p. 1.)

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2. The Statement of Issues, which seeks to affirm the Board's denial of respondent's application, was brought by complainant in her official capacity with the Board.

3. Respondent timely submitted a Notice of Defense, which contained a request for a hearing to challenge the denial of his application.

Respondent's Conviction in 2012

4. A. On August 30, 2012, in the Superior Court of the State of California, Los Angeles County, respondent was convicted upon his no contest plea of one misdemeanor count of grand theft from a person in violation of Penal Code section 487, subdivision (c).

B. Imposition of sentence was suspended and respondent was placed on summary probation for two years under terms including that he serve three days in jail, perform 240 hours of community service, and pay fines and fees totaling \$357. Respondent violated his probation in August 2013 by failing to appear for a status hearing. Respondent testified he did so because he had to travel to Russia for three months for a family emergency, but that excuse was not accepted by the criminal court when offered in 2013.

C. The circumstances underlying the conviction occurred on August 28, 2012. Respondent was walking down a street while barefoot and approached his victim. Respondent stood approximately one foot away from the victim, with his fists clenched and his feet in a fighting position. Respondent told the victim to give him his shoes "if you want to live." The victim feared for his safety, so he gave respondent his shoes. Respondent put on the shoes and walked away.

D. Pursuant to California Code of Regulations, title 16, section (Regulation) 1770, respondent's theft conviction is substantially related to the qualifications, functions or duties of a pharmacy technician. Licensed pharmacy technicians have access to drugs, money, and private patient financial and health information, which can be taken from a pharmacy and sold for profit to others. Someone who demonstrates a propensity for theft poses a threat to the public as a licensee for that reason. As such, respondent's theft conviction, to a substantial degree, evidences his present or potential unfitness to perform the functions authorized by a pharmacy technician license in a manner consistent with the public health, safety, or welfare.

Respondent's Domestic Violence Incident

5. On October 11, 2016, respondent was arrested by the Los Angeles Police Department for battery with serious bodily injury in violation of Penal Code section 243, subdivision (d). (Ex. 8.) He was later prosecuted for this offense, as well as damaging/destroying a cellphone while a victim was calling police in violation of Penal Code section 591.5. (Ex. 5, p. 52.) On November 16, 2016, respondent was acquitted by a jury of violating Penal Code section 591.5; however, the jury was hung on the charge of violating Penal Code section 243, subdivision (d), which resulted in a mistrial. Respondent

was scheduled for a retrial on that remaining charge. (*Ibid.*) On December 14, 2016, the charge under Penal Code section 243, subdivision (d), was dismissed by the court due to the refusal of respondent's mother's to testify at trial. (*Id.*, p. 53.)

6. Regardless of the criminal case outcome, it was established by a preponderance of the evidence that on the evening of October 11, 2016, respondent became embroiled in an argument with his mother in their home. The argument started when respondent's mother complained about how loud respondent was playing his guitar. Respondent ended up pulling his mother's hair and punching her in the face approximately six to nine times. (Ex. 8.) This finding is supported by observations contained in the police report from the officers on scene that respondent's mother had three lumps on the top of her head, a laceration on her forehead, bruising on her temple, and an internal nose injury causing heavy bleeding. Respondent was observed with redness on several knuckles of both hands. Moreover, respondent's mother told police she scratched respondent's chest in an effort to stop his attack; officers saw four scratches on respondent's chest.¹

*Aggravating Facts*²

7. Attached to respondent's application filed with the Board is his written narrative of the events underlying his 2012 conviction. (Ex. 2, p. 36.) Respondent described the incident as one in which he was walking down a street and noticed a laptop computer sitting on top of a vehicle. He wrote that he decided to take the computer before it became damaged in the sunlight or was stolen by another person. This description has no relationship to what actually led to respondent's conviction. During the hearing, respondent admitted he "created a story about stealing a computer . . . to his advantage" for purposes of improving his chances of receiving the license he requested from the Board.

8. During the hearing, respondent denied making any threats to the man from whom he took the pair of shoes. He testified that he asked for the shoes and was given them. Respondent's testimony is inconsistent with the statements of his victim and an eyewitness noted in the police report for the incident (ex. 7) and defies common sense. Respondent also denied striking his mother. He testified that the injuries to his mother's face and head observed by the officers was the result of his slamming his bedroom door in her face. Again,

¹ The lack of a battery conviction does not prevent this finding. First, the standard of proof beyond a reasonable doubt in criminal proceedings is much heavier than the preponderance of the evidence standard used in this administrative proceeding. (See Legal Conclusion 1.) Second, the jury was deadlocked on the battery charge; it did not acquit respondent. Third, the fact the battery charge was dismissed due to the lack of cooperation by respondent's mother is not an unusual turn of events in a domestic violence case.

² As explained in the Legal Conclusions, the 2016 domestic violence incident does not constitute cause to deny respondent's application. It can, however, be considered aggravating evidence.

respondent's testimony is inconsistent with the statement of respondent's mother and her observed injuries noted in the police report for the incident (ex. 8) and defies common sense.

Respondent's Evidence

9. Respondent completed a pharmacy technician program and externship. (Exs. A & C.) He completed the community service condition of his criminal probation. (Ex. B.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent bears the burden of establishing his fitness for the license he requests from the Board, including his rehabilitation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259.) This burden requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

Cause for Denial

2. Business and Professions Code section 480, subdivision (a)(1),³ in conjunction with Regulation 1770, allows a board to deny a license on the grounds that an applicant has been convicted of a substantially related crime. In this case, respondent's application is subject to denial under section 480, subdivision (a)(1), and Regulation 1770, because in 2012 respondent was convicted of grand theft from a person, a crime substantially related to the qualifications, functions or duties of a pharmacy technician. (Factual Finding 4.)

3. Section 480, subdivision (a)(2), also allows a board to deny a license on the grounds that an applicant has done "any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another." Respondent's application is subject to denial under section 480, subdivision (a)(2), in that the events underlying his 2012 conviction demonstrate that respondent threatened violence to steal his victim's pair of shoes for his own use, constituting acts involving dishonesty with the intent to substantially injure another person or substantially benefit himself. (Factual Finding 4.)

4. Section 480, subdivision (a)(3)(A) and (a)(3)(B), also allows a board to deny a license on the grounds that an applicant has 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." In this case, respondent's application is subject to denial under section 480, subdivision (a)(3)(A) and (a)(3)(B), in that respondent committed the following acts which, if done by a licentiate of the business and profession in question, would be grounds for discipline of his license:

³ Further undesignated statutory references are to the Business and Professions Code.

a. Respondent's 2012 conviction involved a crime substantially related to the qualifications, functions, or duties of a licensed pharmacy technician, which would constitute cause to discipline a licensee pursuant to sections 490 and 4301, subdivision (l), in conjunction with Regulation 1770.

b. Respondent committed acts involving dishonesty with the intent to substantially benefit himself, which would constitute cause to discipline a licensee pursuant to section 4301, subdivision (f).⁴

Disposition

5. In determining whether to grant a pharmacy technician license, the Board shall give consideration to evidence of rehabilitation; however, public protection shall take priority over rehabilitation, and where evidence of both conflict, public protection shall take precedence. (§ 4313.)

6. The criteria for rehabilitation in this case is specified in Regulation 1769, and analyzed with regard to this case, as follows:

a. The nature and severity of the act(s) or crime(s) under consideration as grounds for denial. Based on Legal Conclusions 2-4, respondent's 2012 conviction and underlying acts constitute the only cause for denial of his application. His crime of grand theft from a person involved a trivial amount of personal property, but a threat of serious injury to his victim in order to obtain the property. It is therefore viewed as serious in nature.

b. Evidence of any act(s) committed subsequent to the act(s) or crimes(s) under consideration as grounds for denial that could also be considered as grounds for denial under Section 480. Although the domestic violence incident in 2016 itself is not cause for denial, it still constitutes acts of misconduct subsequent to respondent's 2012 conviction. The same is true for respondent's knowingly false statements on his license application.

c. The time that has elapsed since commission of the act(s) or crime(s) referred to in (a) and (b) above. The crime underlying respondent's conviction occurred in 2012, his domestic violence incident in 2016, and his false statements on his application in 2018. This demonstrates a pattern of misconduct from 2012 through 2018, and therefore should be reviewed as recent.

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⁴ It is alleged that respondent's acts of domestic violence against his mother in 2016 would be grounds for discipline of a licensee pursuant to section 4301, subdivision (p), which provides license discipline for "[a]ctions or conduct that would have warranted denial of a license." However, this argument is circular, as section 480 does not provide cause to deny an application for such acts.

d. Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant. Respondent violated his criminal probation once, but otherwise complied with the conditions and successfully completed probation.

e. Evidence, if any, of rehabilitation submitted by the applicant. Respondent submitted limited evidence of rehabilitation. Completion of the community service condition from his criminal probation was required. Completion of the pharmacy technician program is expected of one who wants a pharmacy technician license.

f. The most concerning issue here is respondent's attitude. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Change in attitude from that which existed at the time of the conduct in question is arguably the most important factor in predicting whether future misconduct is likely. (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) In this case, respondent has not experienced a change in attitude. He still denies threatening his victim in 2012 or battering his mother in 2016. His willingness to make false statements in his license application shows a continuing failure to accept responsibility for his past misconduct, a vital first step in changing his attitude.

7. Admittedly, this is an unusual case. The only established cause for denial of respondent's application is his 2012 conviction for using a verbal threat to steal another man's pair of shoes, a crime that occurred seven years ago. However, the aggravating evidence of respondent's 2016 domestic violence incident against his mother, when coupled with the 2012 conviction involving respondent's threat of violence to another, shows a concerning pattern of violence or making threats of violence. The false statements respondent wrote on his application, when coupled with his 2012 conviction involving theft of property, also shows a concerning pattern of dishonesty. Given these concerns, the burden was on respondent to show his fitness for the license he requests, including a satisfactory level of rehabilitation. However, respondent's evidence of rehabilitation was insufficient to dispel the noted concerns about his past behavior being repeated in the future. Since public protection must take precedence in this case, the Board's denial of respondent's license application was warranted. (Factual Findings 1-9; Legal Conclusions 1-6.)

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ORDER

The application of respondent Anton Butramenko for a pharmacy technician license is denied.

DATED: May 7, 2019

DocuSigned by:



ERIC SAWYER

Administrative Law Judge
Office of Administrative Hearings

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

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

13 **ANTON BUTRAMENKO**

14 **Pharmacy Technician Application**
15 **Applicant**

16 Respondent.

Case No. 6489

STATEMENT OF ISSUES

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 21, 2018, the Board of Pharmacy (Board) received an
22 application for a Pharmacy Technician Application from Anton Butramenko (Respondent). On or
23 about January 29, 2018, Anton Butramenko certified under penalty of perjury to the truthfulness
24 of all statements, answers, and representations in the application. The Board denied the
25 application on May 31, 2018.

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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 states, in pertinent part:

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

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

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

21 6. Section 493 states:

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

1 order to fix the degree of discipline or to determine if the conviction is substantially related to the
2 qualifications, functions, and duties of the licensee in question.

3 7. Section 4301 states, in pertinent part:

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

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

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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.

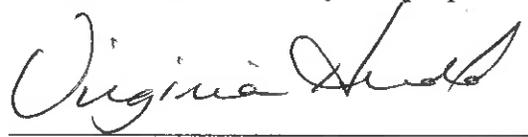
1 d. Respondent committed acts which would be grounds for denial of an application for a
2 license, in violation of section 4301, subdivision (p). Complainant refers to, and by this reference
3 incorporates, the allegations set forth above in paragraphs 9 through 10, inclusive, as though set
4 forth fully.

5 **PRAYER**

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

- 8 1. Denying the application of Anton Butramenko for a Pharmacy Technician
9 Application; and
10 2. Taking such other and further action as deemed necessary and proper.

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12 DATED: 11/13/18



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

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