

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

In the Matter of the Statement of Issues  
Against:

**KUMHMU MYSAYSANA,**

Respondent.

Case No. 6685

OAH No. 2019080780

**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 February 12, 2020.

It is so ORDERED on January 13, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Greg Lippe  
Board President

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

**In the Matter of the Statement of Issues Against:**

**KUMHMU MYSAYSANA, Respondent**

**Agency Case No. 6685**

**OAH Case No. 2019080780**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 12, 2019, in Sacramento, California.

Katelyn Docherty, Deputy Attorney General, represented Anne Sodergren (complainant), Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Kumhmu Mysaysana (respondent) represented himself.

Evidence was received, the record closed, and the matter submitted for decision on November 12, 2019.

## FACTUAL FINDINGS

### Jurisdiction

1. On August 27, 2018, respondent signed and thereafter filed an application for a pharmacy technician license (application). The Board denied the application on February 11, 2019. On March 15, 2019, the Board received respondent's request to appeal that denial.

2. On July 8, 2019, complainant, in her official capacity, filed the Statement of Issues. Complainant alleges that the application is subject to denial based on: (1) conviction of substantially related crimes, pursuant to Business and Professions Code<sup>1</sup> section 480, subdivision (a)(1); (2) making a false statement on the application, pursuant to section 480, subdivisions (a)(2) and (d); and (3) acts of unprofessional conduct that, if done by a licensee, would be grounds for discipline, pursuant to section 480, subdivision (a)(3)(A) in conjunction with section 4300, subdivision (c), and section 4301, subdivisions (f) and (l).

3. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

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<sup>1</sup> All further references are to the Business and Professions Code, unless otherwise noted.

## **Complainant's Evidence**

### **RESPONDENT'S CONVICTIONS**

4. On February 16, 2001, in the Superior Court of California, County of San Joaquin, Case No. SF081186A, respondent was convicted on a guilty plea of unlawfully driving or taking a vehicle in violation of Vehicle Code section 10851, subdivision (a), a felony. Respondent was ordered to serve five years of formal probation and pay \$220 in fines and assessments.

5. The February 16, 2001 conviction was based on the following events: On January 4, 2001, respondent took a 1991 Acura without the owner's consent. While driving the car, respondent was stopped by police and arrested.

6. On September 18, 2001, in the Superior Court of California, County of San Joaquin, Case No. SF083332A, respondent was convicted on a guilty plea of possession of a firearm by a felon in violation of Penal Code section 12021, subdivision (a), a felony, and giving false identification to a peace officer in violation of Penal Code section 148.9, subdivision (a), a misdemeanor. Respondent was sentenced to 300 days in jail, and ordered to serve five years of formal probation followed by three years of conditional probation, and to pay \$220 in fines and assessments.

7. The September 18, 2001 convictions were based on the following events: On September 1, 2001, a car sped up and down the street in front of respondent's house during his niece's birthday party. Because the children were playing in the street, respondent asked the driver to slow down. After the driver "flipped him off," respondent and the driver got into a "heated argument," which evolved into a physical altercation. In the course of that argument, respondent left and returned with his gun, which he used to threaten the driver. The driver ultimately left the scene.

Later that night, police knocked on respondent's door. When they asked for respondent's name, he provided the name of his younger brother instead. Police handcuffed respondent, searched his room, found the gun that was used in the altercation with the driver, and arrested respondent.

8. On January 3, 2005, in the Superior Court of California, County of Sacramento, Case No. 04F04866, respondent was convicted on a plea of no contest of three counts each of attempted murder in violation of Penal Code sections 187, subdivision (a), and 664, and assault with a firearm in violation of Penal Code section 245, subdivision (a)(2), both serious felonies. Respondent was sentenced to 11 years and four months in state prison.

9. The January 3, 2005 convictions were based on the following events: On May 28, 2004, respondent was driving home from a night club, with a friend in the front passenger seat. While respondent was driving alongside another vehicle, respondent's passenger pulled out a gun and fired several shots at the three persons in the other vehicle, wounding them. Police ultimately pulled over respondent's vehicle and discovered a loaded gun under the front passenger seat.

#### **RESPONDENT'S APPLICATION**

10. When respondent signed the application, he certified, under penalty of perjury, that all representations in the application, including all supplementary statements, were truthful and accurate. He also indicated that he understood that the application may be denied for fraud or misrepresentation.

11. Respondent answered "no" to the following question on the application:

Have you ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state, the United States or its territories, a military court, or any foreign country? Include any felony or misdemeanor offense, and any infraction involving drugs or alcohol with a fine of \$500 or more.

The question further clarified that a conviction must be disclosed even if it was later dismissed or expunged. Finally, the question specifically cautioned, in bolded text, that “[f]ailure to disclose a . . . conviction may result in the license being denied or revoked for falsifying the application.”

#### **TESTIMONY BY BOARD INSPECTOR MICHAEL IGNACIO**

12. Michael Ignacio (Ignacio) is a Supervising Inspector for the Board. He has been involved in over 150 investigations of pharmacists, pharmacy technicians, and pharmacies. He has been a licensed California pharmacist for 10 years.

13. Ignacio is familiar with the duties of a pharmacy technician, which include taking prescriptions from patients, entering orders, pulling prescription drugs, counting pills and tablets, and labeling prescription vials to be checked by the pharmacist. Pharmacy technicians are required to be honest, have good character, and possess sound judgment, because they may, depending on individual pharmacy policies, have access to controlled substances, dangerous drugs, and patients' confidential information. Even though pharmacy technicians are supervised by a pharmacist, the pharmacist cannot oversee all work of a pharmacy technician at all times.

Additionally, pharmacy technicians must have an even temperament, because they work closely with the public, including at times difficult and irate patients. Pharmacy technicians who engage in violent behavior potentially pose a threat to public safety and welfare as such behavior suggests poor judgment and a tendency to escalate, rather than diffuse, conflict and violence.

### **Respondent's Evidence**

14. Respondent grew up in "a bad city." He was also young and in his early twenties at the time of the convictions, and noted that "everybody makes mistakes." He is 38 years old now, more mature, and considers himself fully rehabilitated.

15. As to the February 16, 2001 conviction, respondent testified that he did not realize he was driving a stolen car. An "old friend" had asked him to drive the car to Pep Boys Auto when he was stopped by police. He never questioned the friend about who owned the car or why the friend needed him to drive the car.

16. With respect to the September 18, 2001 convictions, respondent admitted he knew that, as a convicted felon, it was illegal to possess a gun. However, he kept the gun for protection due to living in a bad neighborhood. Respondent at first described the incident with the speeding driver as merely an argument or "little altercation," after which they both "went their separate ways" and respondent "thought nothing of it." However, on cross-examination, respondent conceded that the altercation was physical and that he threatened the driver with his gun. Respondent also admitted that he later provided a false name to the officers, but explained that he was "stunned" and "still half asleep."

17. As to the January 3, 2005 convictions, respondent testified that his passenger started shooting at the other car only after it had attempted to "run us off

the road." According to respondent, he did not know that his passenger had a gun until he pulled it out and started firing shots "a few times."

18. Respondent satisfactorily completed all terms of his criminal sentences. He served approximately nine years in prison before being paroled. He was released from parole in April 2017. He paid all fees and assessments, and completed an anger management course. Respondent does not believe that he has an anger problem, but completed the course as a requirement of his criminal parole/probation and to demonstrate rehabilitation. He feels that he now controls verbal outbursts better. He does not currently possess a firearm. Respondent's convictions have not been expunged.

19. On August 15, 2018, respondent completed a pharmacy technician training program through Carrington College (Carrington), earning a 3.56 GPA. Thereafter, from approximately October 2018 to March 2019, he worked as a cashier at Walgreens, while also externing in the pharmacy under supervision. Within two months of starting at Walgreens, he was promoted, and was often called upon to deal with difficult customers, who eventually "left happy."

20. Respondent failed to disclose his prior convictions on the application based on the advice of a Carrington career advisor, who informed respondent that his convictions "didn't come up" in her search of an unidentified database. He contacted the career advisor to provide verification of her prior advice for purposes of the hearing, but she "didn't get back to him." Respondent also did not know that the Board's criminal background check would "go that far back," and he believed his prior convictions would be covered by some "statute of limitations." However, he conceded that he read the question, which calls for disclosure of his convictions. He did not contact the Board for clarification regarding his disclosure obligations at any time.



21. Respondent currently attends Cosumnes River College (CRC) as a full-time student, working towards a degree in business management. He views that degree as a potential "backup plan" in the event he is not granted a pharmacy technician license. Respondent also occasionally volunteers at his church by setting up for events and helping out as needed. Respondent believes he has "learned his lesson" and emphasized that "people can change." If he were granted a probationary license, he would be willing to comply with any probation terms the Board deems appropriate.

22. Respondent submitted three letters of support, none of which indicated a familiarity with respondent's criminal background:

(a) The first letter is undated and signed by "Dr. Joseph Menardo" (Mernardo), the owner of "Joseph Menardo DDS,"<sup>2</sup> who describes himself as a "Dental Hygienist." According to the letter, Menardo has known respondent for six years since respondent previously volunteered for him as an office assistant. He lauds respondent's "personality qualities, intelligence, work ethic, positive attitude, teamwork mentality, leadership, [and] diligence," among other positive characteristics. Respondent testified that he worked for Menardo five years ago and believed Menardo was a dentist. Records from the Dental Board of California indicate that Menardo holds a current, but inactive, registered dental assistant license.

(b) The second letter was undated and unsigned, and purportedly authored by Elyssa Algoun (Algoun), an assistant store manager at Walgreens.

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<sup>2</sup> A DDS designation, typically held by licensed dentists, means that an individual holds a Doctor of Dental Surgery degree.

The letter attests to respondent's outstanding work ethic, professionalism, leadership, character, helpfulness, and delightful presence.

(c) The final letter is also undated and unsigned, and supposedly authored by Carl Hammel (Hammel), a pharmacist at Walgreens who supervised respondent's externship. The letter praises respondent's high productivity, quality work, accuracy, organization, "can do" attitude, work ethic, and engaging personal style.

## **Discussion**

23. California Code of Regulations, title 16, section 1769, subdivision (b), sets forth criteria for evaluating the rehabilitation of an applicant who has been convicted of a crime. These criteria include: (1) nature and severity of the act(s) or offense(s); (2) evidence of subsequent acts; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant; and (5) any evidence of rehabilitation submitted by the applicant.

24. Respondent's convictions include multiple serious and violent felonies. They suggest poor judgment, an inability to appropriately deal with conflict, and a tendency towards violence, which potentially place pharmacy patients and the public at risk of harm. Respondent's convictions for unlawfully driving/taking a vehicle and providing false identification to police also involve dishonesty. As Ignacio persuasively explained, honesty, good judgment, and even temperament are important characteristics for a pharmacy technician, who may have access to controlled substances, dangerous drugs, and patients' confidential information, and may have to deal with difficult or irate patients. As such, respondent's convictions are not only

serious, but substantially related to the qualifications, functions, or duties of a pharmacy technician.

Respondent appears to have taken some steps towards rehabilitation. He satisfied and completed all terms of his criminal sentences. Over 15 years have passed since engaging in the criminal activity which led to his 2005 convictions, and he has no subsequent criminal convictions or acts. It is also commendable that respondent has pursued further education, including his current business management studies at CRC. Nevertheless, the record reveals several significant concerns that strongly counsel against a finding of meaningful rehabilitation.

As an initial matter, although a long time has passed since respondent committed his last crimes, he was in prison for a large part of that period and on parole until April 2017. When a person is incarcerated or on parole, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion . . ." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Additionally, in the course of the hearing, respondent frequently attempted to minimize his role in the underlying crimes and shift the blame to others. Some of his explanations, such as that he falsely provided police with his brother's name because he was still "half asleep," also lacked credibility. Overall, respondent's testimony and demeanor indicated that he lacks insight into the seriousness of, and fails to take full responsibility for, his past actions. (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation".])

Moreover, respondent's failure to disclose his past criminal convictions on the application serves as yet another, more recent instance of dishonesty militating against a finding of rehabilitation. Respondent acknowledged reading the question on the application, which plainly called for disclosure of his convictions. Even if his Carrington career advisor suggested otherwise, respondent had an independent obligation to answer questions truthfully and seek clarification from the Board if necessary.

Finally, respondent's letters of support are given little weight. Menardo's undated letter contains numerous discrepancies regarding his own professional status, and the letters from Algoun and Hammel are neither dated nor signed. Moreover, even setting aside any concerns regarding authenticity or veracity, none of the letters indicated a familiarity with respondent's past criminal convictions.

25. In sum, the overwhelming weight of the evidence shows that respondent is not sufficiently rehabilitated to support his licensure. Given his record of violence, dishonesty, and poor judgment, denial of the application is warranted to protect the public interest.

## **LEGAL CONCLUSIONS**

1. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 4001.1.)

2. Respondent has the burden of proving by a preponderance of the evidence that he is fit for the license he seeks and that his license application should be granted. (Evid. Code, § 115.)

3. Pursuant to section 480, subdivision (a)(1), the Board may deny a license application if the applicant was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician. As set forth in Factual Findings 4 through 9, 12, 13, and 24, respondent was convicted of several crimes involving violence, dishonesty, and poor judgment, each of which is substantially related to the qualifications, functions, or duties of a pharmacy technician. Consequently, cause exists to deny respondent's application under section 480, subdivision (a)(1).

4. Pursuant to section 480, subdivision (a)(2), the Board may deny a license application if the applicant has "[d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself . . . or another, or substantially injure another." Additionally, pursuant to section 480, subdivision (d), the Board may deny a license application if the applicant "knowingly made a false statement of fact that is required to be revealed in the application for the license." Based on Factual Findings 10, 11, 20, and 24, respondent knowingly and falsely stated on his application that he had no prior criminal convictions. Accordingly, cause exists to deny respondent's application under section 480, subdivisions (a)(2) and (d).

5. Pursuant to section 480, subdivision (a)(3)(A), the Board may deny a license application if the applicant has "[d]one any act that if done by a licentiate . . . would be grounds for suspension or revocation of license." A license may be suspended or revoked for unprofessional conduct, which includes the commission of any act involving dishonesty, or the conviction of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. (§ 4301, subs. (f) & (l).) Finally, the Board may deny a license application if the applicant is guilty of unprofessional conduct. (§ 4300, subd. (c).)

As noted in Factual Findings 4 through 7, 10, 11, 20, and 24, respondent committed several acts of dishonesty, including taking another person's vehicle without consent, providing false identification to police, and making a false statement on the application. Such acts constitute unprofessional conduct pursuant to section 4301, subdivision (f).

Based on Factual Findings 4 through 9, 12, 13, and 24, respondent was convicted of several crimes involving violence, dishonesty, and poor judgment, which are substantially related to the qualifications, functions, and duties of a pharmacy technician. Such convictions constitute unprofessional conduct pursuant to section 4301, subdivision (l).

Consequently, respondent committed acts of unprofessional conduct that, if done by a licensee, would be grounds for suspension or revocation of a license. Accordingly, cause exists to deny respondent's application under section 480, subdivision (a)(3)(A) in conjunction with section 4300, subdivision (c), and section 4301, subdivisions (f) and (l).

6. Based on the Factual Findings as a whole, and specifically Factual Findings 23 through 25, respondent did not meet his burden of demonstrating sufficient rehabilitation. Therefore, denial of his application is warranted to protect the public interest.

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## ORDER

The application of respondent Kumhmu Mysaysana for a pharmacy technician license is DENIED.

DATE: December 3, 2019

DocuSigned by:  
*Wim van Rooyen*  
4FC611854A654B4...

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings

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

10  
11 In the Matter of the Statement of Issues  
Against:  
12 **KUMHMU MYSAYSANA**  
13  
14 **Pharmacy Technician License Applicant**  
15 Respondent.

Case No. 6685

**STATEMENT OF ISSUES**

16  
17 **PARTIES**

18 1. Anne Sodergren (“Complainant”) brings this Statement of Issues solely in her official  
19 capacity as the Interim Executive Officer of the Board of Pharmacy (“Board”), Department of  
20 Consumer Affairs.

21 2. On or about August 28, 2018, the Board received an application for a pharmacy  
22 technician license from Kumhmu Mysaysana (“Respondent”). On or about August 27, 2018,  
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. The Board denied the application on February 11, 2019.

25 **JURISDICTION**

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



1 **STATUTORY PROVISIONS**

2 4. Code section 480 states, in pertinent part:

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

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

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

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

16 (3) . . .

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

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

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

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

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

5. Code section 492 states, in pertinent part:

Notwithstanding any other provision of law, successful completion of any  
diversion program under the Penal Code, or successful completion of an alcohol and  
drug problem assessment program under Article 5 (commencing with Section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any

1 agency established under Division 2 (commencing with Section 500) of this code, or  
2 any initiative act referred to in that division, from taking disciplinary action against a  
licensee or from denying a license for professional misconduct, notwithstanding that  
evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

3 6. Code section 4202(c) states:

4 The board shall conduct a criminal background check of the applicant to  
5 determine if an applicant has committed acts that would constitute grounds for denial  
of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of  
6 Division 1.5.

7 7. Code section 4300(c) states, in pertinent part:

8 The board may refuse a license to any applicant guilty of unprofessional  
9 conduct. The board may, in its sole discretion, issue a probationary license to any  
applicant for a license who is guilty of unprofessional conduct and who has met all  
10 other requirements for licensure. . . .

11 8. Code section 4301 states, in pertinent part:

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

14 (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  
15 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

16 (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.

17 (l) The conviction of a crime substantially related to the qualifications,  
18 functions, and duties of a licensee under this chapter. The record of conviction of a  
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
19 States Code regulating controlled substances or of a violation of the statutes of this  
state regulating controlled substances or dangerous drugs shall be conclusive  
20 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
be conclusive evidence only of the fact that the conviction occurred. The board may  
21 inquire into the circumstances surrounding the commission of the crime, in order to  
fix the degree of discipline or, in the case of a conviction not involving controlled  
22 substances or dangerous drugs, to determine if the conviction is of an offense  
substantially related to the qualifications, functions, and duties of a licensee under this  
23 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
contendere is deemed to be a conviction within the meaning of this provision. The  
24 board may take action when the time for appeal has elapsed, or the judgment of

25 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  
26 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
27 dismissing the accusation, information, or indictment.

28 ///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Convictions)**

3 9. Respondent's application is subject to denial under Code sections 480(a)(1), in that  
4 Respondent was convicted of crimes that are substantially related to the qualifications, functions,  
5 and duties of a licensee, as follows:

6 a. On or about February 16, 2001, in the matter entitled *People of the State of*  
7 *California v. Kumhmu Mysaysana*, Case No. SF081186A, in the Superior Court of California,  
8 County of San Joaquin, Respondent pled guilty to a violation of Vehicle Code section 10851(a)  
9 (unlawful driving or taking of a vehicle), a felony. The court sentenced Respondent to 5 years of  
10 formal probation and Respondent was ordered to pay \$220 in fines and assessments. The  
11 circumstances of the crime are that on or about January 4, 2001, Respondent took a 1991 Acura  
12 belonging to another person without that person's consent.

13 b. On or about September 18, 2001, in the matter entitled *People of the State of*  
14 *California v. Kumhmu Mysaysana*, Case No. SF083332A, in the Superior Court of California,  
15 County of San Joaquin, Respondent pled guilty to a violation of Penal Code sections 12021(a)  
16 (felon/addict in possession of a firearm), a felony, and 148.9(a) (give false identification to a  
17 peace officer), a misdemeanor. The court sentenced Respondent to 300 days of imprisonment,  
18 five years of formal probation, and three years of conditional probation. Respondent was ordered  
19 to pay \$220 in fines, assessments, or fees. The circumstances of the crime are that on or about  
20 September 1, 2001, Respondent, a convicted felon, was found to be in possession of a hand gun.

21 c. On or about January 3, 2005, in the matter entitled *People of the State of California v.*  
22 *Kumhmu Mysaysana*, Case No. 04F04866, in the Superior Court of California, County of  
23 Sacramento, Respondent pled no contest to a violation of three counts each of Penal Code  
24 sections 664/187(a) (attempted murder), and 245(a)(2) (assault with a firearm), serious felonies.  
25 The circumstances of the crime are that on or about May 28, 2004, officers with the Sacramento  
26 Police Department respondent to a report that while driving on 99, a vehicle pulled up next to  
27 another vehicle was shooting at the driver, "J.V." J.V. reportedly swerved to avoid the shooter.  
28 The vehicle reportedly caught up with J.V. and J.V. was injured in a volley of additional gun fire.

1 J.V. identified Respondent's vehicle as the vehicle involved in the shooting, and Respondent and  
2 his passenger were identified as the persons involved. The officers found a loaded pistol under  
3 the passenger seat of Respondent's vehicle. The court sentenced Respondent to eleven years and  
4 four months of imprisonment.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(False Statement on Application)**

7 10. Respondent's application is subject to denial pursuant to Code sections 480(a)(2), and  
8 480(d), in that Respondent knowingly made a false statement in his application for a registered  
9 pharmacy technician license. Specifically, Respondent answered "No" to question 8 of the  
10 Pharmacy Technician Application, which states, in pertinent part:

11 Have you ever been convicted of, or pleaded guilty or nolo  
12 contender/no contest to, any crime, in any state, the United States  
13 or its territories. . . ? Include any felony or misdemeanor offense,  
14 and any infraction involving drugs or alcohol with a fine of \$500  
15 or more. You must disclose a conviction even if it was: (1) later  
16 dismissed or expunged pursuant to Penal Code section 1203.4 et  
17 seq., or an equivalent release from penalties and disabilities  
provision from a non-California jurisdiction, or (2) later dismissed  
or expunged pursuant to Penal Code section 1210 et eq., or an  
equivalent post-conviction drug treatment diversion dismissal  
provision from a non-California jurisdiction. Failure to answer  
truthfully and completely may result in the denial of your  
application.

18 NOTE: You may answer "NO" regarding, and need not disclose,  
19 any of the following: (1) criminal matters adjudicated in Juvenile  
20 court; (2) criminal charges dismissed or expunged pursuant to  
Penal code section 1000.4 or an equivalent deferred entry of  
judgment provision from a non-California jurisdiction;

21 (3) convictions more than two years old on the date you submit  
22 your application for violations of California Health and Safety  
23 Code section 11357, subdivisions (b), (c), (d), or (e), or California  
24 Health and Safety Code section 11360, subdivision (b); and (4)  
infractions or traffic violations with a fine of less than \$500 that  
do not involve drugs or alcohol.

25 . . . .

26 **Failure to disclose a disciplinary action or conviction may  
27 result in the license being denied or revoked for falsifying the  
28 application. . . .**

29 In fact, Respondent was convicted of crimes, as set forth in paragraph 9, above.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 (Acts Done by a Licentiate as Grounds for Discipline)

3 11. Respondent's application is subject to denial under Code sections 480(a)(3)(A), in  
4 conjunction with 4300(c) and 4301, in that Respondent committed acts of unprofessional conduct  
5 that if done by a licentiate would be grounds for discipline, as follows:

6 a. **Code Section 4301(f)**: Respondent committed a dishonest act, as follows:

7 i. Respondent took another person's vehicle without that person's consent, as set forth  
8 in paragraph 9, subparagraph a, above.

9 ii. Respondent made a false statement in his application for a registered pharmacy  
10 technician license, as set forth in paragraph 10, above.

11 b. **Code Section 4301(l)**: Respondent was convicted of crimes that are substantially  
12 related to the qualifications, functions, and duties of a licensee, as set forth in paragraph 9, above.

13 **PRAYER**

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

- 16 1. Denying the application of Kumhmu Mysaysana for a Pharmacist License; and,  
17 2. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: July 8, 2019



20 ANNE SODERGREN  
21 Interim Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 *Complainant*

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