

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

In the Matter of the Statement of Issues Against:

**JOHANN REGINDIN DIANAND**

1490 Nelson Court  
Santa Clara, CA 95054

Applicant

Respondent.

Case No. 3772

OAH No. 2010120225

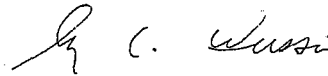
**DECISION**

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 on June 22, 2011.

It is so ORDERED May 23, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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Against:

JOHANN REGINDIN DIANAND,

Respondent.

Case No. 3772

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**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 28, 2010.

Deputy Attorney General Joshua A. Room represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Johann Regindin Dianand appeared and represented himself.

The record was held open to allow respondent to submit a letter from Mary Spencer, Ph.D., and for complainant to respond. Respondent timely filed a letter from Dr. Spencer dated January 6, 2011, which was marked for identification as Exhibit D. No response was received from complainant by February 7, 2011, the date set for her to respond, and Exhibit D was admitted. The record closed and the matter was submitted on February 7, 2011.

**FACTUAL FINDINGS**

1. On April 22, 2009, respondent Johann Regindin Dianand submitted an application to the Board of Pharmacy (board) for registration as a pharmacy technician. The board denied the application and respondent appealed. Complainant Virginia Herold, acting in her official capacity as Executive Director of the board, issued a statement of issues on September 23, 2010. The statement of issues alleges that respondent's application should be denied on the grounds that he has been convicted of crimes substantially related to the qualifications, functions and duties of a pharmacy technician and that he has engaged in conduct involving moral turpitude, dishonesty, or corruption. Respondent requested a hearing.

*Criminal convictions*

2. On April 17, 1997, in Santa Clara County Municipal Court Case No. C9615966, respondent was convicted on his pleas of nolo contendere of a violation of Penal Code section 243.4, subdivision (a) (sexual battery), a felony, and a violation of Penal Code section 261.5, subdivision (b) (unlawful intercourse with a minor), a misdemeanor. Imposition of sentence was suspended and respondent was placed on formal probation for three years on the conditions that he serve one year in jail or on school furlough; pay fines and fees; complete a psychological examination; and register as a sex offender pursuant to Penal Code section 290.

3. Both convictions arose out of events that occurred on November 10, 1996. Respondent touched the victim's vagina while he unlawfully restrained her, and he had unlawful intercourse with her.

4. On September 27, 1999, in Santa Clara County Superior Court Case No. E9809256, respondent was convicted on his pleas of nolo contendere of a violation of Penal Code sections 484/487, subdivision (b)(3) (grand theft by employee), and a violation of Penal Code section 484e, subdivision (d) (access card fraud), both felonies.

On the same date, in Santa Clara County Superior Court Case No. C9930413, respondent was convicted on his pleas of nolo contendere of two violations of Penal Code sections 459/460, subdivision (b) (burglary), both felonies. Respondent admitted that one of the burglary convictions was subject to a penalty enhancement under Penal Code section 12022.1, because he had committed the offense while he was out of custody on bail on the theft charges that led to his convictions in Case No. E9809256.

Respondent was sentenced in both cases on December 16, 1999. He was ordered to serve two years and eight months in state prison; to pay restitution to Macy's in the approximate amount of \$1,600; and to pay a restitution fine of \$1,600. Payment of another restitution fine of \$1,600 was suspended pending his successful completion of parole. Respondent was released from prison on parole on May 1, 2001 and discharged from parole on May 1, 2005.

5. The convictions for grand theft and access card fraud arose out of events that occurred between November 18 and December 2, 1998, while respondent was employed at Macy's. Respondent obtained customers' account information and then charged store merchandise, which he took for himself, to their accounts.

6. The burglary convictions are based on allegations that, on May 8, 1999, respondent entered two different locked vehicles with the intent to commit theft.

*Respondent's evidence*

7. Respondent is 32 years old.

8. Respondent has been gainfully employed with several different companies since he was released from prison. He worked as a warehouseman from December 2003 to June 2004; for Bedrosian Tile and Marble from June 2004 to January 2006; for Safeway from February 2006 to November 2006; and for Walgreens from May 2009 to the present. Respondent states that he has not been involved in any incidents of misconduct with these employers.

9. Respondent attended Mission College from 2003 to 2005, where he obtained his A.A. degree. From June 2008 until February 2009, respondent took pharmacy technician training at Unitek College. Upon completing his training, respondent worked as an intern at Kaiser until May 2009. Since then he has been employed by Walgreens as a pharmacy clerk.

Respondent enjoys his work at Walgreens and feels that his pharmacy technician training has opened a new calling for him. He hopes to return to school and ultimately be licensed as a pharmacist. In April 2010, respondent received an annual performance evaluation from the pharmacist who supervises him, and the evaluation was positive. In the evaluation, which follows a form prepared by Walgreens, the pharmacist does not address respondent's rehabilitation from his criminal convictions.

10. Regarding his convictions for sex-related offenses, respondent testified that he realizes his offenses were "heinous and destructive" and that he accepts full responsibility for his actions. Respondent emphasizes that, after he was released on parole, he participated in mandatory group therapy for sex offenders from December 2002 until May 2005. The therapist, Mary Spencer, Ph.D., reports that respondent completed the therapy without any absences. Respondent states that he learned a great deal from the therapy and that he feels great remorse for the victim of his offense.

Respondent also denies that he committed rape and states that he did not restrain the victim. Respondent stated that the victim was a "would-be girlfriend" who was 16 or 17 years old and came to his house to have sex, but then regretted it and was "angry." Respondent testified that it was "not rape in [my] mind."

11. Regarding the burglary offenses, respondent states that he "took the fall" for those offenses because he was driving the car with the stolen stereo equipment in it, and he was the only person in the car who was over 18 years old. He denies that he broke into the vehicles and stole the equipment but admits that he was "part of the crime."

Respondent does not specifically address the crimes he committed while he was employed at Macy's, or his rehabilitation from those offenses, other than to say that he was trying to fit in with the wrong crowd and that he was a "young, stupid teenager."

12. Respondent states that, since he was released from prison, he has recommitted himself to his church.

13. The status of respondent's restitution payments is not clear. Respondent states that he has paid Macy's in full and that he has also made payments to the County of Santa Clara; he estimates that he has paid more than \$3,000 toward these restitution obligations. Recently, however, respondent received a demand for payment of \$2,100 from the Franchise Tax Board in Case No. E9809256.

14. There is no evidence from anyone other than respondent to attest to his rehabilitation.

15. Respondent has not sought dismissal of any of his criminal convictions.

## LEGAL CONCLUSIONS

### *First cause for denial*

1. The board may deny an application for registration as a pharmacy technician if the applicant has committed "unprofessional conduct." (Bus. & Prof. Code, § 4300, subd. (c).)<sup>1</sup> The term "unprofessional conduct" includes the conviction of a crime that is substantially related to the qualifications, functions and duties of a technician. (§ 4301, subd. (l).) Section 480, subdivision (a)(1), also authorizes the board to deny an application if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed activity. A crime is substantially related "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." (Cal. Code Regs., tit. 16, § 1770.)

2. The crimes of sexual battery and unlawful intercourse are substantially related to the qualifications, functions or duties of a pharmacy technician. Respondent's convictions of these offenses, as set forth in Finding 2, constitute cause to deny his application.

### *Second cause for denial*

3. The crimes of grand theft by an employee, access card fraud, and burglary are substantially related to the qualifications, functions or duties of a pharmacy technician. Respondent's convictions of these offenses, as set forth in Finding 4, constitute cause to deny his application.

### *Third cause for denial*

4. The term "unprofessional conduct as used in section 4300, subdivision (c), includes the "commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption . . ." (§ 4301, subd. (f).) Section 480, subdivision (a)(2), also authorizes the

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

board to deny an application for registration if the applicant has “done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.” Each of respondent’s convictions is based on acts of moral turpitude, dishonesty, fraud, deceit or corruption. Respondent’s commission of those acts constitutes cause to deny his application.

### *Discussion*

5. It is respondent’s burden to demonstrate that he is sufficiently rehabilitated from his criminal offenses so that it would not be contrary to the public interest to grant him a pharmacy technician license. The board has published disciplinary guidelines to assist in evaluating an applicant’s rehabilitation. Among the factors the board considers are the applicant’s overall criminal record; the nature and severity of his offenses; whether his offenses resulted in actual harm to the public; whether the applicant realized any financial benefit from his offenses; whether the applicant complied with the terms of his criminal sentence; the time that has passed since the offenses; and whether the applicant’s convictions have been dismissed. The board places great weight on recent, dated statements from supervisors, co-workers and parole officers who know the applicant and can speak to the strength of his rehabilitation.

There is unquestionably evidence of rehabilitation. It has now been over 11 years since respondent’s last offense and over five years since he was discharged from parole. There is no evidence of any misconduct since respondent was released from prison in 2001. Since his release, respondent has been gainfully employed and has also pursued higher education and vocational training. He has been working successfully as a pharmacy clerk for almost two years. Respondent has made progress toward his restitution obligation. All of these matters are to respondent’s credit.

The evidence presented at this time, however, does not demonstrate sufficient rehabilitation for licensure. All of respondent’s crimes were serious and resulted in actual harm to members of the public; four of the offenses involved financial benefit to respondent. The extent to which respondent accepts responsibility for his sex offenses is not clear. On one hand, he states that he feels remorse and accepts full responsibility, but on the other hand he denies that he restrained the victim and denies that he committed forcible rape. Respondent’s theft offenses, and particularly the offenses he committed while employed by Macy’s, bear closely upon his fitness to work in a profession where he will be entrusted with the safe delivery of controlled substances and other drugs. Having committed crimes of dishonesty for personal gain, and having betrayed the trust of his employer, strong evidence is required to assure the board that respondent is now honest and trustworthy. There is, however, no evidence other than respondent’s own testimony that he would be an honest and trustworthy licensee.

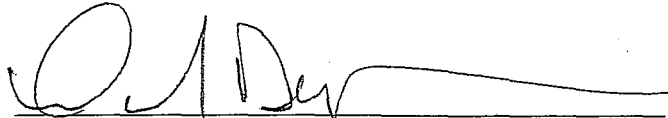
Respondent’s rehabilitative efforts to date are recognized, and respondent is encouraged to continue to pursue his rehabilitation. At this time, however, the evidence

establishes that it would be contrary to the public interest grant respondent's application for a pharmacy technician registration, even on a probationary basis.

ORDER

The application of respondent Johann Regindin Dianand for registration as a pharmacy technician is denied.

DATED: March 9, 2011



DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

1. EDMUND G. BROWN JR.  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 3772

13 **JOHANN REGINDIN DIANAND**  
14 **1490 Nelson Court**  
15 **Santa Clara, CA 95054**

**STATEMENT OF ISSUES**

**Applicant for Pharmacy Technician License**

Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about April 22, 2009, the Board of Pharmacy, Department of Consumer Affairs  
21 received an Application for Registration as a Pharmacy Technician from Johann Regindin  
22 Dianand (Respondent). On or about February 4, 2009, Respondent certified under penalty of  
23 perjury as to the truthfulness of all statements, answers, and representations in the application.  
24 The Board denied the application on April 13, 2010.

25 JURISDICTION

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



STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

“(c) The board may refuse a license to any applicant guilty of unprofessional 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 other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy . . . .”

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be limited to, any of the following:

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code states, in pertinent part:

“(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. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

“(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.

“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 . . . [license].”

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

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

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

8  
9 FIRST CAUSE FOR DENIAL OF APPLICATION

10 (Conviction of Substantially Related Crime(s))

11 8. Respondent's application is subject to denial under the following section(s) of the  
12 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and  
13 California Code of Regulations, title 16, section 1770, for conviction of a substantially related  
14 crime, in that on or about April 17, 1997, in a case titled *People v. Johann Hanuman Dianand*,  
15 Case No. 196132 and/or C9615966 in Santa Clara County Municipal Court, Respondent was  
16 convicted of violating (1) Penal Code section 243.4(a) (Sexual battery), a felony, and (2) Penal  
17 Code section 261.5(b) (Unlawful sexual intercourse with a minor), a misdemeanor, as follows:

18 a. On or about November 19, 1996, based on an incident on or about November  
19 10, 1996 during which Respondent was alleged to have touched the genitals of an unlawfully  
20 restrained minor, and had intercourse with that minor, Respondent was charged in Case No.  
21 C9615966 with violating (1) (1) Penal Code section 243.4(a) (Sexual battery), a felony, and (2)  
22 Penal Code section 261.5(b) (Unlawful sexual intercourse with a minor), a misdemeanor.

23 b. On or about April 17, 1997, in Case No. 196132 and/or C9615966, Respondent  
24 pleaded nolo contendere to both counts charged.

25 c. On or about June 3, 1997, the imposition of sentence was suspended in favor of  
26 a period of formal probation of three (3) years, on terms and conditions including one (1) year in  
27 county jail or on work/school furlough (19 days CTS), sex offender registration pursuant to Penal  
28 Code section 290, a psychological evaluation, no contact with the victim, and fines and fees.

1    SECOND CAUSE FOR DENIAL OF APPLICATION

2    (Conviction of Substantially Related Crime(s))

3                          9. Respondent's application is subject to denial under the following section(s) of the  
4 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and  
5 California Code of Regulations, title 16, section 1770, for conviction of a substantially related  
6 crime, in that on or about September 27, 1999, in a consolidated case titled *People v. Johanni*  
7 *Hanuman Dianand*, Case No(s). E9809256 and/or C9930413 n Santa Clara County Superior  
8 Court, Respondent was convicted of violating (1) Penal Code section(s) 484/487(b)(3) (Grand  
9 theft by employee or agent – over \$400.00), a felony, (2) Penal Code section 484e(d) (Acquire or  
10 retain another's access card account information without consent for fraudulent use), a felony, (3)  
11 Penal Code section(s) 459/460(b) (Burglary – 2nd degree), a felony, and (4) Penal Code  
12 section(s) 459/460(b) (Burglary – 2nd degree), a felony, with an enhancement pursuant to Penal  
13 Code section 12022.1 for committing the burglaries while out on bail, as follows:

14                          a.        On or about December 21, 1998, based on incidents on or about November 18,  
15 1998 and December 2, 1998 during which Respondent was alleged to have taken clothing or other  
16 items from his employer (Macy's) of a value exceeding \$400.00, Respondent was charged in  
17 Case No. E9809256 with violating Penal Code section(s) 484/487(b)(3) (Grand theft by employee  
18 or agent – over \$400.00), a felony. On some date subsequent to this initial filing, a second charge  
19 was added for violating Penal Code section 484e(d) (Acquire or retain another's access card  
20 account information without consent for fraudulent use), a felony.

21                          b.        On or about June 7, 1999, based on incidents on or about May 8, 1999 during  
22 which Respondent was alleged to have broken into two separate vehicles with the intention of  
23 committing theft, Respondent was charged in Case No. C9930413 with violating (1) Penal Code  
24 section(s) 459/460(b) (Burglary – 2nd degree), a felony, and (2) Penal Code section(s) 459/460(b)  
25 (Burglary – 2nd degree), a felony, with an enhancement pursuant to Penal Code section 12022.1  
26 for committing the burglaries while out on bail for the charges brought in Case No. E9809256.

27                          c.        On or about September 27, 1999, in a proceeding for Case No(s). E9809256  
28 and C9930413, Respondent pleaded nolo contendere to all counts and admitted the enhancement.

1 d. On or about December 16, 1999, Respondent was sentenced on all four counts  
2 and the enhancement, and also for a violation of probation in Case No. 196132, to a state prison  
3 term of two (2) years and eight (8) months (3 days CTS), to be followed by a period of parole of  
4 three (3) years, restitution to Macy's of \$1,623.99, a restitution fine of \$1,600.00, and another  
5 restitution fine of \$1,600.00 suspended unless parole were to be subsequently revoked.

6 e. On or about May 1, 2001, Respondent was released from custody to parole. On  
7 or about May 1, 2005, Respondent was discharged from parole.

8  
9 THIRD CAUSE FOR DENIAL OF APPLICATION

10 (Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

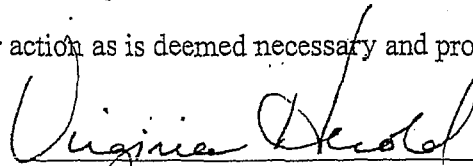
11 10. Respondent's application is subject to denial under the following section(s) of the  
12 Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in  
13 that, as described in paragraphs 8 and/or 9 above, Respondent engaged in conduct involving  
14 moral turpitude, dishonesty, fraud, deceit, or corruption.

15  
16 PRAYER

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

- 19 1. Denying the application of Johann Regindin Dianand to be a Pharmacy Technician;  
20 2. Taking such other and further action as is deemed necessary and proper.

21 DATED: 9/23/10

  
22 VIRGINIA HEROLD

23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

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