

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

In the Matter of the Statement of Issues
Against:

MARK SAMSON

Pharmacy Technician Registration Applicant

Respondent.

Case No. 3949

OAH Case No. 2012040873

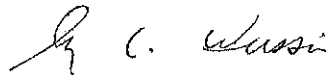
DECISION AND ORDER

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 on February 7, 2013.

It is so ORDERED on January 8, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Statement of Issues
Against:

MARK COLLADO SAMSON,

Respondent.

Agency Case No. 3949

OAH Case No. 2012040873

PROPOSED DECISION

Administrative Law Judge Deena Ghaly, Office of Administrative Hearings, State of California, heard this matter on September 5, 2012, in Los Angeles, California.

Nancy Kaiser, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (the Board).

Mark Collado Samson (Respondent) represented himself.

At the outset of the hearing, Complainant moved to amend the Statement of Issues by removing the text at page 6, lines 5 through 8 and the word "also" from line 9 on the same page, resulting in removal of one criminal conviction as a basis for denying Respondent's application for licensure. Respondent did not oppose the motion and it was granted.

Evidence was received, the record closed and the matter submitted on the hearing date.

FACTUAL FINDINGS

Background

1. On or about November 1, 2011, Complainant, in her official capacity, filed the Statement of Issues denying Respondent's application for a pharmacy technician license. Respondent timely filed a Notice of Defense and this hearing ensued.

2. Complainant contends Respondent's application for a registered dental assistant license should be denied based on three grounds: (i) Respondent's conviction of two crimes, petty theft and possession of a dangerous weapon, which Complainant contends are substantially related to the qualifications, functions or duties of licensed pharmacy technicians; (ii) Respondent's commission of a dishonest or fraudulent act; and (iii) Respondent's commission of an act warranting denial of a license.

Respondent's Criminal Convictions

3(a). On or about June 22, 2006, following Respondent's plea of nolo contendere, the Los Angeles County Superior Court, in case number 6CP03701, convicted Respondent of violating Penal Code section 12020, subdivision (a)(1) (possession of a deadly weapon), a misdemeanor. The court placed Respondent on 3 years' probation, with terms and conditions.

3(b). The terms and conditions of probation included, among others, paying fines, restitution and assessments totaling \$810, performing community service, obeying all laws and orders of the court, and not committing any criminal offenses. Respondent successfully completed the terms and conditions of his probation and the court terminated it early in June 2007.

3(c). The facts and circumstances underlying Respondent's conviction are that on or about May 13, 2006, Respondent was the subject of a traffic stop by Los Angeles County Sheriff's deputies. When asked if he had anything illegal on his person, Respondent replied that he had some "crystal," referring to Methamphetamine, and a knife in the vehicle. The deputies searched the car and found a plastic baggie with a clear substance resembling methamphetamine and a "shuriken," a knife-like weapon. Respondent told the deputies that he used methamphetamine but promised to quit if he was not taken to jail.

4(a). On or about March 4, 2011, following Respondent's plea of nolo contendere, the Los Angeles County Superior Court, in case number 1BF00472, convicted Respondent of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. The court placed Respondent on 36 months' probation with terms and conditions.

4(b). The terms and conditions of Respondent's probation included, among others, serving one day in county jail with credit for one day served, paying fines, restitution and assessments totaling \$220, staying away from the clothing retailer, Hollister's, and performing community service. Respondent remains on probation.

4(c). The facts and circumstances underlying Respondent's 2011 conviction are that, on or about December 5, 2010, Respondent stole hair wax from the clothing store, Hollister. Respondent had taken the hair wax and placed it in his jacket when approached by the store's loss prevention officer. He pushed her as he attempted to flee the store.

Respondent's Background

5. With respect to the weapon charge, Respondent testified that he bought it at a shopping mall and did not know it was illegal to carry.

6. Regarding the 2011 shoplifting charge, Respondent explained that the conviction was the result of his being "young and stupid."

7. Respondent is four weeks from completing his studies to become a chef at the Cordon Bleu Cooking School in Pasadena where he maintains a B average. He also works as a sous chef in a restaurant in Venice and runs his own catering business. He intends to be a full-time chef and seeks his pharmacy technician restaurant only as a back-up plan.

8. Respondent testified that he has used the controlled substance, crystal methamphetamine, until as recently as six weeks before the day of the hearing.

Qualifications, Functions and Duties of Pharmacy Technician

9. Registered pharmacy technicians work under the supervision but not necessarily the direct observation of pharmacists. They are responsible for all of the non-discretionary duties of a pharmacist, including dispensing medications, calling doctors for authorization to refill prescriptions, and handling money. They often have access to private and sensitive patient information. Their integrity, sound judgment and maturity are of paramount importance to effectively practice their profession.

LEGAL CONCLUSIONS

Applicable Legal Provisions

1. Business and Professions Code section 480¹ provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (§§ 480, subd. (a)(1) and (3)(B).) Section 480 also provides that an applicant can be denied a license for the commission of an act involving fraud, dishonesty, or deceit with the intent to substantially benefit himself. (§ 480, subd. (a)(2).)

¹ All further statutory references are to the Business and Professions Code unless otherwise specified.

2. California Code of Regulations, title 16, section 1770 provides that, for purposes of evaluating a license application, a crime or act is substantially related to the qualifications, functions or duties of the profession if “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.”

3. Section 4301 states, in pertinent 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:

[¶...¶]

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

Burden and Standard of Proof

4. The burden of proof is on the applicant to establish she is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal. 2d 167.) The standard of proof is a preponderance of the evidence. (Evid. Code § 115.)

Rehabilitation and Mitigation

6. Under CCR, title 16, section 1769, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and her present eligibility for registration: (1) the nature and severity of the act or offense; (2) subsequent acts; (3) the time that has elapsed since commission of the act or crime; (4) whether the applicant has complied with any terms of probation; and (5) “Evidence, if any, of rehabilitation submitted by the applicant.”

Disposition

7. Cause exists to deny Respondent’s application for a pharmacy technician license pursuant to sections 480, subdivisions (a)(1) for conviction of crimes and commission of acts substantially related to the qualifications, functions and duties of pharmacy technicians as charged. Respondent’s convictions for possession of a dangerous weapon and for petty theft evidences both present and potential unfitness to perform the duties of a pharmacy technician in that they indicate immaturity, recklessness and lack of appropriate judgment. His possession of a weapon indicates a propensity to violence. None of these characteristics are consistent with the temperament and professional demeanor of a pharmacist technician. (Factual Finding 3(a) -3(c), 4(a)-4(c) and 9, and Legal Conclusions 1 and 2.)

8. Cause does not exist to deny Respondent's application for a pharmacy technician license pursuant to section 480, subdivision (a)(2) committing a dishonest act with the intent to substantially benefit himself, as set out in Complainant's Second Cause of Denial of Application. It defies common sense to conclude that Respondent meant to or did substantially benefit himself or anyone else by stealing a bottle of hair wax. (Factual Finding 4(a)-(c) and 6, and Legal Conclusions 1.)

9. Cause exists to deny Respondent's license under sections 4301, subdivision (p) and 480, subdivisions (a)(3)(A) and (a)(3)(B) in that Respondent committed acts which if done by a pharmacy technician licentiate would be grounds for suspension or revocation of his license as follows: (i) Respondent was convicted of two crimes substantially related to the qualifications, functions and duties of a pharmacy technician and (ii) Respondent was found to be in possession of Methamphetamine. (Factual Findings 3(c) and 4(a)-4(c), and Legal Conclusions 1-3.)

10. Although cause exists to discipline Respondent, the analysis is not complete until the indicia of rehabilitation set forth at CCR, title 16, section 1769 are evaluated:

- (1) Nature and Severity of Respondent's Crimes - While they are not severe, Respondent's crimes are of an immature and reckless nature;
- (2) Subsequent Acts - Respondent's subsequent and continuing use of controlled substances do not support a finding of successful rehabilitation;
- (3) Time Elapsed Since Commission of Respondent's Crimes - Respondent's first conviction is more than six years ago; however, his second stemmed from an incident less than two years ago and which occurred while his application for licensure was pending, both factors which support a finding that Respondent has not achieved rehabilitation;
- (4) Whether Respondent Complied with Terms of Probation - Respondent not only successfully completed all the terms and conditions of his probation stemming from his 2006 conviction, he was released early from it. He remains on probation for his second conviction, however. Therefore, at best, this factor can be only considered neutral in assessing rehabilitation;
- (5) Other Evidence of Rehabilitation- Respondent has proven himself to be an intelligent, productive and creative individual. He is involved in a number of enterprises and there is much to indicate that his future looks promising. However, there is scant evidence that supports a finding that he has left behind the attitude of immaturity and lack of respect for the law which marked his criminal conduct.

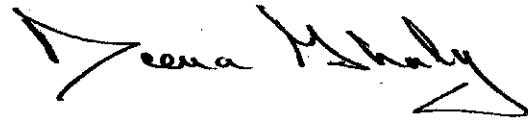
(Factual Findings 3-9, and Legal Conclusion 6.)

11. Considering the totality of the circumstances, the evidence supports the conclusion that, at this time, Respondent is not sufficiently rehabilitated to allow him to safely practice as a pharmacist technician.

ORDER

Respondent Mark Collado Samson's application for licensure as a pharmacy technician is denied.

Dated: October 5, 2012

A handwritten signature in black ink, appearing to read "Deena Ghaly". The signature is stylized with a large initial "D" and a long horizontal stroke extending to the right.

DEENA GHALY
Administrative Law Judge
Office of Administrative Hearings

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

13 In the Matter of the Statement of Issues
Against:

Case No. 3949

14 **MARK COLLADO SAMSON**
244 East Vernon Street, Apt. #7
15 Long Beach, CA 90806

STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 7, 2009, the Board of Pharmacy (Board) received an application
23 for registration as a Pharmacy Technician from Mark Collado Samson (Respondent). On or about
24 September 30, 2009, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 August 18, 2010.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

17 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
18 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 or
20 act is substantially related to the qualifications, functions, or duties of the business or profession
21 for which application is made."

22 5. Section 490 states, in pertinent part:

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

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code. "

9 6. Section 492 states, in pertinent part:

10 "Notwithstanding any other provision of law, successful completion of any diversion
11 program under the Penal Code, or successful completion of an alcohol and drug problem
12 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
13 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
14 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
15 division, from taking disciplinary action against a licensee or from denying a license for
16 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
17 record pertaining to an arrest. This section shall not be construed to apply to any drug diversion
18 program operated by any agency established under Division 2 (commencing with Section 500) of
19 this code, or any initiative act referred to in that division."

20 7. Section 4300 provides in pertinent part, that every license issued by the Board is
21 subject to discipline, including suspension or revocation."

22 8. Section 4301 states, in pertinent part:

23 "The board shall take action against any holder of a license who is guilty of unprofessional
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
25 Unprofessional conduct shall include, but is not limited to, any of the following:

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27 ///

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

4

5 (i) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

22

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

25

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.

3
4 "(p) Actions or conduct that would have warranted denial of a license."

5 **REGULATORY PROVISIONS**

6 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

13 **CONTROLLED SUBSTANCES**

14 10. "Methamphetamine," is a Schedule II controlled substance as defined in Health and
15 Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Criminal Convictions)**

18 11. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
19 that Respondent was convicted of a crime as follows:

20 a. On or about March 4, 2011, after pleading nolo contendere, Respondent was
21 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty
22 theft] in the criminal proceedings entitled *The People of the State of California v. Mark Collado*
23 *Samson* (Super. Ct. Los Angeles County, 2011, No. 1BF00472). The Court placed Respondent
24 on 36 months probation, with terms and conditions. The circumstances surrounding the
25 conviction are that on or about December 5, 2010, Respondent stole, took, and carried away
26 personal property of another, to wit: hair wax. The Los Angeles County Sheriff's Department
27 responded to a call regarding a petty theft in the clothing store, Hollister. Respondent was inside
28 the store and was being detained by a loss prevention officer. Respondent had taken hair wax

1 from the store and put it in his jacket pocket. He attempted to leave the store without paying for
2 the product when he was stopped by the loss prevention officer. The loss prevention officer
3 stated that Respondent pushed her as he attempted to flee the store. Respondent was arrested for
4 violation of Penal Code section 484, subdivision (a) [petty theft].

5 b. On or about June 22, 2006, after pleading nolo contendere, Respondent was convicted
6 of one misdemeanor count of violating Health & Safety Code section 11377(a) [possession of a
7 controlled substance] in the criminal matter entitled *The People of the State of California v. Mark*
8 *Collado Samson* (Super. Ct. Los Angeles County, 2006, No. 6CP03701). On the same date, after
9 pleading nolo contendere, Respondent was also convicted of one misdemeanor count of violating
10 Penal Code section 12020, subdivision (a)(1) [possession of deadly weapon] in the criminal
11 proceeding entitled *The People of the State of California v. Mark Collado Samson* (Super. Ct. Los
12 Angeles County, 2006, No. 6CP03701). The Court placed Respondent on 3 years probation, with
13 terms and conditions. The circumstances surrounding the convictions are that on or about May
14 13, 2006, Respondent was contacted by the Los Angeles County Sheriff's Department during a
15 traffic stop. When asked if he had anything illegal on his person, Respondent admitted he had
16 some "crystal"¹ and a knife in the vehicle. While conducting a search of Respondent's vehicle,
17 the officer found a shuriken² on the driver's side door panel. In addition, the officer retrieved a
18 cigarette box containing a paper bindle. The paper bindle contained a clear plastic baggie with a
19 clear-like substance resembling methamphetamine. Respondent indicated he had quit using
20 methamphetamine and had been clean for three months. He subsequently stated that he recently
21 started using methamphetamine and he promised to quit if he was not taken to jail. Respondent
22 was arrested for violation of Penal Code section 12020, subdivision (a)(1) [possession of a deadly
23 weapon] and Health and Safety Code section 11377, subdivision (a) [possession of a controlled
24 substance].

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27 ¹ Referring to methamphetamine.

28 ² Also known as a ninja star, knife-like weapon.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Dishonest Acts, Fraud, or Deceit)**

3 12. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
4 that on or about December 5, 2010, Respondent committed dishonest acts, fraud, or deceit with
5 the intent to substantially benefit himself, or substantially injure another. Complainant refers to
6 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraph
7 (a), as though set forth fully.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

14 a. Respondent was convicted of crimes substantially related to the qualifications,
15 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
16 or potential unfitness to perform the functions authorized by his license in a manner consistent
17 with the public health, safety, or welfare, in violation of sections 4031, subdivision (i), and 490,
18 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
19 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs
20 (a) and (b), inclusive, as though set forth fully.

21 b. On or about December 5, 2010, Respondent committed acts involving dishonesty,
22 fraud, or deceit, in violation of section 4301, subdivision (f). Complainant refers to, and by this
23 reference incorporates, the allegations set forth above in paragraph 11, subparagraph (a), as
24 though set forth fully.

25 c. On or about May 13, 2006, Respondent was found to be in possession of a controlled
26 substance, to wit: Methamphetamine, in violation of section 4301, subdivisions (j) and (o).
27 Complainant refers to, and by this reference incorporates, the allegations set forth above in
28 subparagraph 11, subparagraph (b), as though set forth fully.

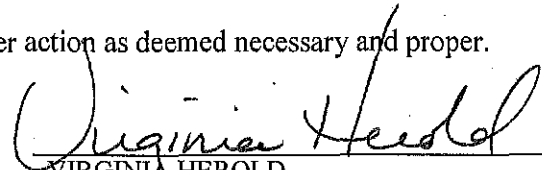
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PRAYER

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

1. Denying the application of Respondent for registration as a Pharmacy Technician;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/1/11



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

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