

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

In the Matter of the Statement of Issues Against:

JIMMY B. LAM
295 Monterey Blvd., #5
San Francisco, CA 94131

Respondent.

Case No. 3999

OAH NO.: 2011070254

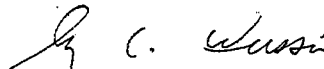
DECISION AND ORDER

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 April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 22, 2011.

Brett A. Kingsbury, Deputy Attorney General, represented complainant, Virginia K. Herold, the Executive Officer of the Board of Pharmacy.

Respondent Jimmy B. Lam represented himself and was present throughout the administrative hearing.

The matter was submitted for decision on November 22, 2011.

FACTUAL FINDINGS

1. Virginia K. Herold brought the statement of issues solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board).
2. Respondent submitted an application for a license as a pharmacy technician on March 4, 2009. Respondent certified under penalty of perjury that the statements contained in the application were true. The Board denied the application on October 26, 2010.

Respondent's Criminal History

3. On April 9, 1991,¹ in the Superior Court of the State of California, County of San Francisco, respondent was convicted of violating Health and Safety Code section 11378

¹ The statement of issues alleges that the conviction occurred on May 7, 1991, however the certified court documents indicate that the conviction occurred on April 9, 1991 and the sentencing occurred on May 7, 1991.

(possession of a controlled substance for sale (methamphetamine)), a felony. Imposition of sentence was suspended and respondent was placed on probation for three years, given credit for having served 47 days in county jail, was ordered to attend drug testing and treatment as directed by the probation officer, and to pay various fines and fees. On May 5, 1992, respondent's probation was revoked and he was sentenced to one year in the county jail. On December 21, 1992, respondent's probation was revoked and he was sentenced to 16 months in state prison. On July 21, 1993, respondent's probation was reinstated and extended to September 7, 1994. On October 6, 1994, respondent's motion to have the plea set aside pursuant to Penal Code section 1203.4 was granted. On June 3, 1999, respondent's motion to withdraw his guilty plea on the basis of ineffective assistance of counsel was granted and the charge was dismissed in the interest of justice pursuant to Penal Code section 1385.

4. On November 29, 2001, in the Superior Court of the State of California, County of San Francisco, respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance (methamphetamine)), a felony. On June 3, 2010, respondent's guilty plea was set aside and dismissed pursuant to Penal Code section 1385.

5. On January 2, 2002, in the Superior Court of the State of California, County of San Francisco, respondent was convicted of violating Health and Safety Code section 11378 (possession for sale of a controlled substance (methamphetamine)), a felony. Imposition of sentence was suspended and respondent was placed on probation for a period of three years, on conditions that included serving 45 days in the county jail, completing any substance abuse treatment or drug testing as directed by the probation officer, and paying various fines and fees. On January 10, 2007, respondent's petition to have the guilty plea set aside and the case expunged pursuant to Penal Code section 1203.4 was granted.

6. On October 3, 2003, respondent was convicted of violating Health and Safety Code section 11378 (possession for sale of a controlled substance (methamphetamine)), a felony. Imposition of sentence was suspended and respondent was granted three years probation on conditions that included serving one year in county jail or in a residential treatment program. On January 10, 2007, respondent's petition to have the guilty plea set aside and the case expunged was granted pursuant to Penal Code section 1203.4.

7. The duties of a pharmacy technician include regularly handling controlled substances, including many addictive substances. Respondent's convictions are substantially related to the qualifications, functions and duties of a pharmacy technician because they demonstrate a pattern of criminal behavior involving the illegal possession of controlled substances and disrespect for the law. These convictions also establish unprofessional conduct because they involve the violation of statutes regulating controlled substances.

Respondent's Evidence

8. Respondent does not dispute his criminal behavior. He completed the Twelve Step Programs of California, where he was a resident from December 17, 2003 to June 17,

2004. Twelve Step Programs was a licensed and certified drug and alcohol treatment program. Respondent reports that he has not used controlled substances for five years. He continues to attend Narcotics Anonymous meetings weekly, but does not consider himself to have an addiction. Respondent testified that he spent the year in the Twelve Step Programs in order to be released from jail, and he attends Narcotics Anonymous meetings because he has made friends there.

9. In 2008, respondent attended Everest College in San Francisco for nine months where he studied to become a pharmacy technician. He achieved the second highest grade point average in his class and was awarded the school's 2009 "Dream Award." The Dream Award was presented to respondent for having persevered against difficult odds to complete his education and graduate from Everest. Respondent took and passed the pharmacy technician certification examination given by the Pharmacy Technician Certification Board, which is a national organization. The Pharmacy Technician Certification Board is not associated with the California Board of Pharmacy, but passage of its examination demonstrates the individual possesses the knowledge to perform as a competent pharmacy technician. Respondent worked hard in school to learn the information presented.

10. As a part of his program at Everest, respondent obtained a one-month externship at Kaiser Hospital in South San Francisco. At Kaiser, he worked in pharmacy inventory, pulled pharmacy orders and typed labels.

11. The student services coordinator at Everest College submitted a letter on respondent's behalf dated November 15, 2010. She reports that respondent served as a student ambassador volunteer at the college, and that he displayed exceptional work ethics and outstanding professionalism towards staff, faculty and fellow students.

12. Greg Moore, the Director of Senior Programs and Facilities at the Shih Yu-Lang Central YMCA in San Francisco, wrote a character letter for respondent and accompanied him to the hearing. Moore first met respondent in 2007 at a social engagement. Respondent offered to volunteer his time at the YMCA senior center. Respondent volunteered at the YMCA for well over a year, spending several hours each week assisting seniors at the center. Moore describes respondent as "someone who has overcome a very challenging childhood and some poor decisions in his early life to become a kind, considerate, and responsible person."

13. Respondent's neighbor of four years submitted a character letter in which she describes respondent as a generous and helpful neighbor.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the denial of a license of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Respondent's 1991 and 2001 convictions for possession and possession for sale

of methamphetamine were vacated pursuant to Penal Code section 1385. Because the pleas were set aside and the convictions were vacated, they may not serve as the basis to deny respondent a license under Business and Professions Code section 480.

Respondent's 2002 and 2003 convictions for possession for sale of a controlled substance were expunged pursuant to Penal Code section 1203.4. Expungement under Penal Code section 1203.4 does not eradicate a conviction or purge a defendant of the guilt established thereby. (*Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872.) Business and Professions Code section 480, subdivision (a)(1) provides that in determining whether to issue a license, the Board may consider convictions which have subsequently been dismissed pursuant to Penal Code section 1203.4. (See also, Bus. & Prof. Code § 4311, subd. (d).) A conviction for possession for sale of a controlled substance is substantially related to the qualifications, functions or duties of a licensed pharmacy technician pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j). Therefore, cause to deny respondent's application exists under Business and Professions Code section 480, subdivision (a)(1), pursuant to Factual Findings 5 and 6.

2. Business and Professions Code section 4300, subdivision (c), provides that the Board may refuse a license to any applicant who is guilty of unprofessional conduct. Business and Professions Code section 4301, subdivision (j), defines unprofessional conduct to include the violation of any of the statutes of this state regulating controlled substances. Cause exists to deny respondent's license application under Business and Professions Code section 4300, subdivision (c), pursuant to Factual Findings 5 and 6.

3. The issue presented here is whether respondent has demonstrated sufficient rehabilitation. Respondent has not been arrested since 2003, and completed his most recent grant of probation successfully. He has successfully petitioned for his convictions to be expunged or dismissed. Respondent has volunteered his time extensively with the YMCA, and is a good neighbor. He has completed a course of study with special recognition and has impressed the administrators at the college he attended. Respondent should be commended for turning his life around in a very positive way. (Factual Findings 8 through 13.)

However, the unlawful possession for sale of controlled substances is intimately related to the work of a pharmacy technician. As a pharmacy technician, respondent would be handling controlled substances, some of them addictive substances, on a daily basis. Respondent acknowledges that he was involved in the unlawful possession for sale of methamphetamine, a highly addictive substance, for years. Respondent has participated in a yearlong residential drug treatment program and weekly Narcotics Anonymous meetings, however, he denies having a substance abuse problem. (Factual Findings 3 through 13.) Respondent has not fully acknowledged the gravity of his criminal behavior. In light of the close nexus between respondent's criminal behavior and the duties of a pharmacy technician, full acknowledgement of the wrongfulness of his behavior and a strong showing of rehabilitation are essential. At present, the protection of the public requires denial of respondent's application.

ORDER

The application of Respondent Jimmy B. Lam for a pharmacy technician license is denied.

DATED: 12/9/11



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Statement of Issues
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13 **295 Monterey Blvd., Apt. 5**
San Francisco, CA 94131

STATEMENT OF ISSUES

14 Respondent.

15 Complainant alleges:

16 PARTIES

- 17 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
19 2. On or about March 4, 2009, the Board of Pharmacy, Department of Consumer Affairs
20 received an application for a Pharmacy Technician License from Jimmy B. Lam (Respondent). On
21 or about October 9, 2008, Jimmy B. Lam certified under penalty of perjury to the truthfulness of
22 all statements, answers, and representations in the application. The Board denied the application
23 on October 26, 2010.

24 JURISDICTION

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

1 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
2 Civil Procedure."

3 7. Section 4301 of the Code states:

4 ". . . . Unprofessional conduct shall include, but is not limited to, any of the following:

5 ". . . .

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

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

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

28 ". . . ."

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Violations of Statutes Regulating Controlled Substances)

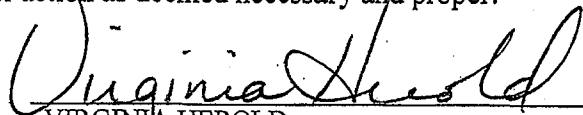
10. Respondent's application is subject to denial under §§ 4300(c) and 4301(j) of the Code in that Respondent violated state law regulating controlled substances and dangerous drugs. The circumstances are described above in the First Cause for Denial of Application.

PRAYER

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

1. Denying the application of Jimmy B. Lam for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 6/2/11



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

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