

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

In the Matter of the Statement of Issues  
Against:

**SAMEH BARAKAT**

Pharmacist Applicant

Respondent.

Case No. 4042

OAH 2012040213

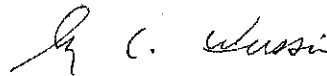
**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 4, 2013.

It is so ORDERED on December 5, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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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:

SAMEH BARAKAT  
Carmichael, California

Case No. 4042

OAH No. 2012040213

Respondent.

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, in Sacramento, on October 29, 2012.

Elena L. Almanzo, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board).

Sameh Barakat (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on October 29, 2012.

**FACTUAL FINDINGS**

1. On June 10, 2010, the Board received an Application for Pharmacist Licensure and Examination (Application) from respondent. Respondent had earlier submitted an application for registration as an Intern Pharmacist on May 13, 2010. On June 1, 2010, respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application.<sup>1</sup> The Board denied respondent's Application on December 16, 2010. The denial was based upon respondent entering his Canadian social security number on the Application. Respondent appealed from the Board's denial.

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<sup>1</sup> Respondent signed an Applicant Affidavit that contained, among other matters, the following language: "I understand that falsification of the information on this form may constitute grounds for denial or revocation of the license."

2. Respondent is a Canadian citizen and a 2010 graduate of the University of Maryland. Respondent completed 1760 hours of pharmacy intern experience. He applied for and was issued a California Pharmacy Intern Card by the Board. On both his application for registration as an intern pharmacist, and on his Application for Pharmacist Licensure and Examination, respondent was asked to provide his social security number. Respondent's Canadian Social Insurance Number is "[REDACTED]." He provided this number on his application for registration as an intern pharmacist. He provided this same number, but in different configuration ("[REDACTED]") on his Application for Pharmacist Licensure and Examination. On both applications he entered this number in the area where he was specifically requested to provide his United States social security number.<sup>2</sup> Respondent did not have a United States social security number at the time he completed and submitted the two applications to the Board.

3. Respondent explained that he was in the process of applying for a United States social security number when he submitted the two applications to the Board. His United States social security card application was approved following his graduation from pharmacy school, and his receipt of a job offer from Rite Aid, initially as a pharmacy intern, and then as a pharmacist pending his licensure as a California pharmacist. His U.S. social security card was issued August 12, 2010. Respondent subsequently provided his U.S. social security number to the Board.

4. By letter dated October 14, 2010, the Board advised respondent that his Application was deficient, and requested that he provide a written explanation for the discrepancy between the two different social security numbers. By letter dated November 1, 2010, respondent confirmed that he used his Canadian social security number on the earlier submissions. He explained:

This is due to the fact that acquiring an American Social Security Number requires a valid and verifiable reason from the Social Security Office to grant this number – which in my case was legal employment in this country. The problem that

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<sup>2</sup> The Application stated with regard to this disclosure: "Disclosure of your U.S. social security account number is mandatory. Section 30 of the Business and Professions Code, section 17520 of the Family Code, and Public Law 94-455 (42 USC § 405(c)(2)(C)) authorize collection of your social security account number. Your social security number will be used exclusively for tax enforcement purposes, for purposes of compliance with any judgment or order for child or family support in accordance with section 17520 of the Family Law Code, or for verification of license or examination status by a licensing or examination entity which utilizes a national examination and where licensure is reciprocal with the requesting state. If you fail to disclose your social security account number, your application will not be processed and you may be reported to the Franchise Tax Board, which may assess a \$100 penalty against you."

developed was simply a "catch 22" situation that I will describe below.

To acquire the Pharmacist Intern License I required an American Social Security Number. However, to acquire the Social Security Number, I required my Pharmacist Intern position which in turn required the Pharmacist Intern License to begin with – only then could I satisfy the Social Security Card Office requirements for issuing me a Social Security Number.

5. At hearing, respondent suggested that someone at the Social Security Office in Maryland actually told him that he could submit the Canadian number on the Application, and that he could later amend the Application with the U.S. social security number once it was obtained. He provided no corroboration of this conversation. Respondent characterized his actions in providing the Canadian social security number on the Application as doing so with "good intentions." He noted that he eventually provided the correct information to the Board on his own volition. He denied any purposeful conduct or intent to defraud the Board.

6. Respondent applied for and was granted licensure by three other state pharmacy boards: Maryland, Nevada and Washington. He is currently employed as a pharmacist in charge at a Rite Aid in Chehalis, Washington. Respondent described this pharmacy as the tenth busiest Rite Aid on the west coast. He believes the Board should consider the fact of his licensure by these three states in evaluating this case.

7. Respondent also noted that two years have passed since he applied for California licensure. It has caused him economic and professional hardship. He was unemployed for six months until he became employed in Washington. He would like to return to California to be closer to his family. Respondent indicated that he is an honest person and he believes that he has been punished enough by the Board for his actions.

8. Debi Mitchell is the Board's manager for individual licensing. She noted that the Board receives a number of applications from foreign-born applicants for California licensure. The Board has allowed applicants to submit applications without a social security number. The Board will typically send out a deficiency letter to applicants, and then applicants will use that same letter to obtain a social security number from the Social Security Administration. Applicants are typically afforded one year to correct the deficiency and obtain a pharmacist license from the Board. Ms. Mitchell noted that the Board's form Application for Pharmacist Licensure and Examination clearly explained the need for applicant social security information, and what the information would be used for and why.

9. Joan Coyne also testified. She is the Board's supervising inspector. Ms. Coyne explained that pharmacy is a highly regulated industry. Pharmacy practice requires absolute accuracy in how matters are recorded and reported by pharmacists. There is a general concern that pharmacists not be party to the fraudulent obtaining of medications.

The expectation is that pharmacists are to be honest, ethical and that they conduct themselves with integrity. Ms. Coyne believes that respondent's actions in applying for a license were dishonest. He was not truthful when he provided his Canadian social security number on the Application.

10. Respondent demonstrated little remorse for his actions, and any regret he expressed related largely to how the denial of his Application had delayed him professionally, and prevented him from working in California. He continued to defend his actions as being a reasonable response to his particular predicament. While such may explain his actions, it does not justify them. Ms. Mitchell explained that respondent's situation was not unusual. The Board routinely allows similarly situated applicants up to one year to obtain a social security card. Respondent could easily have explained his situation to the Board and sought advice from the Board on how best to proceed.

Respondent suggested that his actions were not at all dishonest and that he wrote "ONTARIO (CANADA)" on the Application in a space immediately before and adjacent to the area where he supplied his Canadian social security number. His reliance upon such reference is disingenuous in this case. It is immediately apparent that this reference related only to his Canadian driver license number, which he provided in the space before the reference to Canada. It begs the question why he did not write "Canada" immediately after the space requesting his social security number.

Finally, it does appear that respondent attempted to make his Canadian social security number appear, in configuration, similar to a U.S. social security number. Canada does not use dash spacers between number sets, as does the United States. Respondent supplied these dashes on the Application. (See Finding 2.)

11. It does appear that respondent's actions were purposeful, and intended to falsely represent that he had a United States social security number at a time that he did not. His testimony at hearing lacked insight or appreciation for the seriousness of such conduct, or an understanding of why the Board took the action that it did. Respondent portrayed himself as an unwitting victim of Board delay and unnecessarily harsh action. He has experience professional hardship, to be sure. However, until such time as accepts responsibility, appreciates the gravity of, and expresses a greater degree of remorse for his dishonest conduct, his application for licensure should be denied.

## LEGAL CONCLUSIONS

1. Pursuant to 4300, subdivision (c), the Board may "refuse a license to any applicant guilty of unprofessional conduct."

Business and Professions Code section 4301, subdivision (f), defines "unprofessional conduct" to include 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.”

2. Business and Professions Code section 480, subdivision (a)(2), further provides for denial of a license where an applicant has done “any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another;...”

3. Cause was established under Business and Professions Code sections 480, subdivision (a)(2); 4300, subdivision (c); and 4301, subdivision (f), to deny respondent’s application. He engaged in dishonesty when he completed and submitted the two applications to the Board.

4. In California Code of Regulations, title 16, section 1769, the Board has set forth the following criteria for rehabilitation when considering the denial of a license:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

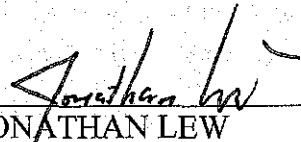
5. The matters set forth in Findings 5 through 11 have been considered. Respondent knew that the information regarding his social security number was false. He provided false information on two separate applications to the Board. Respondent certified that the information on the applications was accurate, and understood that providing false information “may constitute grounds for denial or revocation of the registration.” At hearing he sought only to explain the difficult predicament he was in at the time he submitted the applications. While relevant to understanding why he engaged in such actions, he did not take the additional step of demonstrating how he is now rehabilitated.

Respondent, to receive positive consideration on any reapplication, must demonstrate greater insight into the seriousness of his dishonesty. He has yet to accept full responsibility for his actions. He does not appear to appreciate the gravity of, and/or show some remorse for his dishonest conduct. For all these reasons, his application for licensure should be denied.

ORDER

The application of Sameh Barakat for Pharmacist Licensure and Examination is DENIED.

DATED: November 6, 2012

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
Against:  
12 **SAMEH BARAKAT**  
13 **2349 Fallwater Lane**  
14 **Carmichael, CA 95608**  
**Pharmacist License**  
15 Applicant/Respondent.

Case No. 4042

**STATEMENT OF ISSUES**

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about June 10, 2010, the Board of Pharmacy, Department of Consumer Affairs  
22 received an application for a Pharmacist License and examination from Sameh Barakat  
23 (Respondent). On or about June 1, 2010, Sameh Barakat certified under penalty of perjury to the  
24 truthfulness of all statements, answers, and representations in the application. The Board denied  
25 the application on December 16, 2010.

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## JURISDICTION

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

5       4.       Section 4300 of the Code states in pertinent part:

6  
7       "(c) The board may refuse a license to any applicant guilty of unprofessional  
8 conduct. The board may, in its sole discretion, issue a probationary license to any  
9 applicant for a license who is guilty of unprofessional conduct and who has met all  
10 other requirements for licensure. The board may issue the license subject to any  
11 terms or conditions not contrary to public policy, including, but not limited to, the  
12 following:

13       "(1) Medical or psychiatric evaluation.

14       "(2) Continuing medical or psychiatric treatment.

15       "(3) Restriction of type or circumstances of practice.

16       "(4) Continuing participation in a board-approved rehabilitation program.

17       "(5) Abstention from the use of alcohol or drugs.

18       "(6) Random fluid testing for alcohol or drugs.

19       "(7) Compliance with laws and regulations governing the practice of pharmacy.

20       5.       Section 480 of the Code states in pertinent part:

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

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

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

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

      "(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 for the license."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Act involving Dishonesty)

6. Respondent's application is subject to denial under section 4300 (c ) and 480 (a)(2) in that respondent dishonestly reported a false social security number to obtain Registration as a Pharmacy Intern. The circumstances are as follows:

(a) On or about May 13, 2010, respondent submitted an application for registration as an Intern Pharmacist. Respondent signed the application on April 16, 2010, certifying under penalty of perjury that "...all statements, answers, and representations in the foregoing application, including all supplementary statements are true and correct. Respondent's application listed a social security number of [REDACTED]. At the time of the submission of his application, respondent did not have a US Social Security number.

(b) Respondent's application for Licensure as a Pharmacist lists a social security number of [REDACTED]. On or about October 10, 2010 respondent appeared at the Board office to inquire about the status of his application. Respondent produced his United States Social Security card and number which did not match the number provided in his application for licensure as a Pharmacist nor in his application for Registration as a Pharmacist intern.

(c) In his letter of explanation to the Board, Respondent admitted that he did not receive an American Social Security number until August of 2010.

SECOND CAUSE FOR DENIAL OF APPLICATION

(False Statement of Fact)

7. Respondent's application is subject to denial under section 480(c) in that he submitted an application for Registration as Pharmacy Intern and his application for Pharmacist containing knowingly false information, namely a false social security number as set forth above in paragraphs 6 (a), (b), and (c), above.

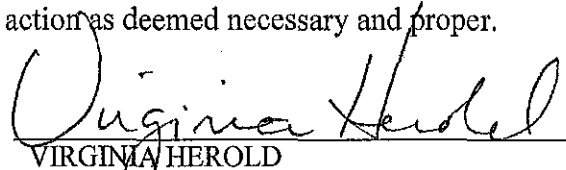
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PRAYER

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

1. Denying the application of Sameh Barakat for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/12



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

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