

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

In the Matter of the Accusation Against:

**JENEL BACUAL, a.k.a.  
JENEL SUGABON BACUAL**  
10840 #2 Hortense  
North Hollywood, CA 91602

Pharmacy Technician Registration No. TCH  
58548

Respondent.

Case No. 4147

OAH No. 2012070707

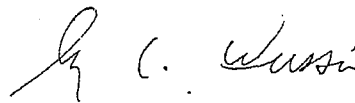
**DECISION AND ORDER**

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 May 2, 2013.

It is so ORDERED on April 2, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

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In the Matter of the Accusation Against:

JENEL BACUAL, a.k.a., JENEL SUGANOB  
BACUAL,

Pharmacy Technician Registration  
No. TCH 58548,

Respondent.

Agency Case No. 4147

OAH Case No. 2012070707

**PROPOSED DECISION**

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on February 14, 2013, in Los Angeles, California.

Michelle M. McCarron, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board).

Jenel Bacual (Respondent) represented himself.

The parties submitted the matter for decision on February 14, 2013.

**STATEMENT OF THE CASE**

Complainant seeks to discipline Respondent's pharmacy technician registration for suffering a felony conviction.

Respondent conceded the conviction.

**FACTUAL FINDINGS**

1. Complainant, in her official capacity, filed the Accusation on or around June 22, 2012. Respondent filed a Notice of Defense on July 2, 2012.

2. The Board issued pharmacy technician registration to Respondent on September 21, 2004; it expired on February 29, 2012. Respondent has not renewed his registration. The Board retains jurisdiction over Respondent's registration, pursuant to Business and Professions Code section 118.

3. On February 22, 2011, following Respondent's nolo contendere plea, the Los Angeles County Superior Court, in case number GA082118, convicted Respondent of violating Penal Code section 487, subdivision (a) (grand theft of personal property), a felony. The court suspended imposition of sentence and placed Respondent on formal probation for three years under various terms and conditions.

4. The terms and conditions of probation included, among other things, serving two days in jail, paying \$270 in fines and fees, paying \$1,094.76 in restitution to the victim retail store, and obeying all laws.

5. The facts underlying the conviction were that between approximately September and December 2010, while working as a clerk/cashier at a Rite Aid store in Burbank, California, Respondent processed numerous fraudulent merchandise returns and retained the value of each item in cash. On numerous occasions, while alone at the cash register, having taken an item from the store inventory, Respondent would process a false return transaction and in this way, create a cash overage in the amount of the return and then take the extra cash to reconcile the cash register. He admitted to the Burbank Police Department that he stole more than \$1,000, but less than \$10,000. He further explained to the police that his mother, who lived in the Philippines, was very ill and he was stealing money to pay for her medical bills. Respondent repeated this reasoning at hearing.

6. At hearing, Respondent asserted that his conviction was expunged, but he provided no evidence to support that assertion.

7. Respondent only worked as a pharmacy technician for a brief period soon after receiving his registration. He has not worked as a pharmacy technician since 2005. His training was in compounding. He has no retail experience. Before his employment as a cashier at Rite Aid (from 2008 until his arrest in December 2010), Respondent worked as a restaurant manager. He currently works as a caregiver to a cancer patient.

8. Respondent asserted that his mother died approximately two years ago. He asserted that he would not steal again. He described his crime as a "poor decision" and stated that he regrets it every day. Respondent stated that jail was a bad experience and he never wants to repeat it. Respondent further asserted that he has no plans to seek employment as a pharmacy technician.

9. The Board incurred \$1,920 in enforcement costs through the California Department of Justice, Office of the Attorney General. Those costs were reasonable. Complainant's counsel declared in her declaration of prosecution costs that it was her good faith estimate that the Board would incur an additional \$340 (two additional hours) in

preparation of the case up to the commencement of the hearing. However, there was no evidence of the additional actual costs incurred nor was there evidence that the actual costs were unavailable at hearing. Therefore, the additional \$340 was not allowed.

10. A licensed pharmacy technician must be honest and trustworthy, as he or she can work alone within a pharmacy, have access to controlled substances, fill prescriptions, have access to patient medical records, and work without constant supervision.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 4301, subdivisions (f) and (l) provide that the Board may take action against a licentiate or registrant who is guilty of unprofessional conduct. Subdivision (f) defines unprofessional conduct, in part, as the commission of any act involving dishonesty, fraud, or deceit. Subdivision (l) defines unprofessional conduct as the conviction of a crime substantially related to the qualifications, functions, and duties of a Board licentiate or registrant.

2. Business and Professions Code section 490 provides that the Board may discipline a licentiate or registrant for the conviction of a crime substantially related to a licensee's qualifications, functions, or duties.

3. California Code of Regulations, title 16, section 1770 provides that a crime or act is substantially related to a Board licensee's (or registrant's) qualifications, functions, or duties if the crime or act evidences, to a substantial degree, the present or potential unfitness of a Board licensee or registrant to perform the functions authorized by his or her license or registration in a manner consistent with the public health, safety, or welfare.

4. Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

5. Respondent's felony evidences his present and potential unfitness to perform the duties of a pharmacy technician in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1770.) Respondent's crime is substantially related to a pharmacy technician's qualifications, functions, and duties. (*Ibid.*)

6. Cause exists to discipline Respondent's pharmacy technician registration, pursuant to Business and Professions Code, sections 4301, subdivision (l), and 490, for his felony conviction, as set forth in Factual Findings 1-3, and Legal Conclusions 1-5.

7. Respondent's actions that led to his felony grand theft conviction involved dishonesty, fraud, and deceit.

8. Cause exists to discipline Respondent's pharmacy technician registration, pursuant to Business and Professions Code, section 4301, subdivision (f), for acts involving dishonesty, fraud, and deceit, as set forth in Factual Findings 1-3, 5, and Legal Conclusions 1, 3-5, and 7.

9. California Code of Regulations, title 16, section 1769, subdivision (b), provides that when considering the suspension or revocation of a registration on the ground that the registrant has been convicted of a crime, rehabilitation is to be evaluated considering: the nature and severity of the offense (subdivision (1)); the total criminal record (subdivision (2)); the time that has elapsed since commission of the offense (subdivision (3)); whether the registrant has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant (subdivision (4)); and evidence, if any, of rehabilitation submitted by the registrant (subdivision (5)).

10. Respondent is currently on probation. Since the criminal court requires him to obey all laws, his current lawful behavior is of limited value in assessing his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent's crime is recent. (Cal. Code Regs., tit. 16, § 1769, subd. (3).) The nature and severity of his felony crime is severe in that it evidences dishonesty and deceit. (Cal. Code Regs., tit. 16, § 1769, subd. (1).) His reason for engaging in such conduct was unpersuasive, as many persons experience having an ill relative and do not engage in grand theft to pay for medical costs. Respondent provided little evidence of rehabilitation. His demeanor at hearing was contrite and respectful (Cal. Code Regs., tit. 16, § 1769, subd. (5)), but he did not provide evidence of expungement, or of doing anything beyond complying with his court-ordered probation. In light of his conviction, it cannot be concluded that the public would be safe if the Board were to allow Respondent to retain his pharmacy technician registration, even if probationary. Revocation is therefore required.

11. Business and Professions Code section 125.3 provides that the administrative law judge may direct a licentiate found to have committed a violation of the applicable licensing act to pay the reasonable costs of enforcement of the case.

12. Respondent provided no evidence of financial hardship with regard to Complainant's costs. His current employment does not require his pharmacy technician registration; he continues to have gainful employment despite the Order *post*.

13. Cause exists to impose the reasonable costs of enforcement (\$1,920) against Respondent, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1-10, and Legal Conclusions 1-12.

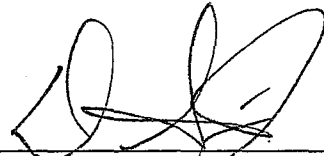
ORDER

Pharmacy technician license number TCH 58548, issued to Respondent Jenel Bacual is revoked. Respondent shall relinquish his technician license to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his revoked technician license for three years from the effective date of this Decision.

A condition of reinstatement shall be that Respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the Board.

Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,920 within 15 days of the effective date of this Decision, or as otherwise directed by the Board. The Board may allow a longer period to satisfy the costs payment and may further allow monthly payments, as it deems appropriate.

Dated: March 7, 2013



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DANIEL JUAREZ  
Administrative Law Judge  
Office of Administrative Hearings

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14 Pharmacy Technician Registration  
No. TCH 58548  
15 Respondent.

Case No. 4147

**A C C U S A T I O N**

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about September 21, 2004, the Board of Pharmacy ("Board") issued Pharmacy  
21 Technician Registration No. TCH 58548 to Jenel Bacual, also known as Jenel Suganob Bacual  
22 ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times  
23 relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.  
24

25 **JURISDICTION**

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







1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

4 9. Section 125.3 states, in pertinent part, that the Board may request the administrative  
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
7 case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
11 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
12 Respondent has been convicted of crimes substantially related to the qualifications, functions, or  
13 duties of a pharmacy technician as follows:

14 11. On or about February 22, 2011, after pleading nolo contendere, Respondent was  
15 convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft of  
16 personal property] in the criminal proceeding entitled *The People of the State of California v.*  
17 *Jenel Bacual* (Super. Ct. Los Angeles County, 2011, No. GA082118). The Court sentenced  
18 Respondent to serve 2 days in Los Angeles County Jail and placed her on 3 years formal  
19 probation, with terms and conditions. The circumstances surrounding the conviction are that on  
20 or between October and December of 2010, while working as a store manager for Rite-Aid, in  
21 Burbank, California, Respondent processed fraudulent returns and pocketed the cash. When  
22 confronted by the Burbank Police Department Officer, Respondent admitted that he began  
23 processing fraudulent returns in September or October 2010. In addition, he estimated that he  
24 stole about twenty different times from Rite Aid, admitted that he stole over one thousand dollars,  
25 but less than ten thousand dollars.

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