

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

In the Matter of the Statement of Issues Against:

Case No. 4139

GAYK GEVORKYAN

OAH 2012070838

Pharmacy Technician Applicant

Respondent.

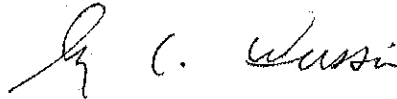
DECISION AND ORDER

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 18, 2013.

It is so ORDERED on March 19, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

GAYK GEVORKYAN,

Respondent.

Case No. 4139

OAH No. 2012070838

PROPOSED DECISION

The hearing in the above-captioned matter took place on January 3, 2013, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant Virginia Herold was represented by Christina Felix, Deputy Attorney General. Respondent appeared with his attorney, Brandon De Jonge.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
2. Respondent Gayk Gevorkyan applied to the Board to become a registered (licensed) pharmacy technician. Respondent submitted his application on September 13, 2010. On April 29, 2011, the Board denied the application. Respondent sought a hearing, and this proceeding ensued. All jurisdictional requirements have been met.
3. On October 24, 2007, Respondent was convicted of felony insurance fraud, in violation of Penal Code section 500, subdivision (a)(4). The conviction was entered against him in the Superior Court, County of Los Angeles, based on his nolo contendere plea.
4. The court suspended the imposition of sentence and placed Respondent on three years formal probation, on various terms and conditions, including that he pay restitution in the amount of \$117,000, apportioned to a number of insurance companies. He was also required to perform 200 hours of CalTrans service.

5. (A) The facts and circumstances of the crime are that Respondent participated in a fraud ring headed up by his father, and in which his sister was heavily involved. This was in 2005, and likely earlier. Claimant's father headed up a corporation called Global Human Service, based in Glendale and ostensibly involved in humanitarian work and the provision of food and clothing in Armenia. In fact, what the firm did was obtain late model cars, typically SUV-types, from their owners, who would report the cars as stolen, and then take the insurance pay-off for the allegedly stolen cars. The cars would be placed in large (40 foot) shipping containers, two cars to a container. A false wall would be put in at the end where the doors were, and a small part of the container packed with the "humanitarian goods" such as clothing or food. The containers were then shipped by rail to Houston, and then taken by freighter to Poti, in the Republic of Georgia.

(B) In a few cases, new cars were obtained from local car dealers through the use of false documentation pertaining to credit worthiness and the identity of the purchaser, and then promptly shipped out of the country, without any payments being made on the cars.

(C) Investigators with the Los Angeles Police Department, FBI, Customs Enforcement, and other federal agencies were able to establish that numerous vehicles had been stolen. For example, FBI agents, with the help of Georgian authorities, found seven containers in Georgia to each have two stolen vehicles. Four other stolen vehicles were found in the United States, or in Italy, in transit to Georgia from Global Human Services.

(D) Respondent's fingerprints were found on the rear hatch of a 2004 Lexus RX 330, and his father's prints were found on the outside of a passenger door of that vehicle. Likewise, Respondent's prints were found on the inside of the driver's side window of a 2004 Infinity FX 35. When police searched the house Respondent owned, and where his father and mother had lived, they found incriminating material in the form of computer memory devices, documents, and other things. For example, one storage device had photos of two cars, the photo showing the cars at Global Human Services, which cars had been reported stolen in 2003 in Las Vegas, and never recovered. Furthermore, police found a vehicle in the driveway of Respondent's home, with a copy of his resume in the car, leading to the reasonable inference that he had been driving it. (Respondent's father and mother, who had been living with him, were no longer in the country.) The car in the driveway, a BMW, had been obtained from a dealer through fraud, and the documents were in the car. And, police established that Global Human Services was paying Respondent's mortgage.

(E) Respondent's sister attempted to minimize his involvement in the business, and her own when she spoke to the police, but she was caught in several false statements. For example, she claimed she had not been to the business in a month, but surveillance had placed her and her husband¹ there just days before the interview. She denied knowing what was in the containers, but she handled the paperwork for the shipping,

¹ Respondent's brother-in-law was also involved, as his fingerprints were found on stolen cars.

and had been told by the shipper that cars had been found in two containers, overseas, shortly before the police interviewed her. She continued to claim that the shipping manifests, which showed contents such as clothing and food, were correct, despite the evidence found at her home and place of business that point to the shipment of the stolen cars.

6. On March 10, 2010, the court granted Respondent's motion to "expunge" his conviction pursuant to Penal Code section 1203.4, but denied his motion to reduce the conviction to a misdemeanor, because the conviction was for a crime that could not be so reduced under the law.

7. Respondent's conviction is for a crime that, on its face and under the facts and circumstances is substantially related to the duties, qualifications, and functions of a pharmacy technician. The crime and Respondent's other actions indicate dishonesty, a lack of integrity, and a willingness to scheme with others toward criminal ends.

8. When Respondent applied for his license, he appended a statement to the application about the circumstances of his conviction. It reads, in pertinent part, as follows:

In 2004, I was working part time for a company that got me into a unfortunate circumstance without my knowledge. I have never been in trouble and got into this situation only because of the unethical practices of my employer. . . . Due to the timing and my lack of financial resources to hire an attorney, I took a pre-deal with the prosecutor and got sentenced to three years of probation, which the judge later terminated my conviction

9. As Complainant's counsel illustrated at hearing, consideration of the evidence of the underlying crime and how the prosecution unfolded shows that Respondent was misleading the Board about his involvement in the fraud and theft ring. His "employer" was for practical purposes his father, who he lived with; his co-worker his sister. Respondent's claim of ignorance of what the family business did is belied by his fingerprints on two stolen cars, his possession of a car taken by fraud, and the payment of his mortgage by his "unethical . . . employer." His claim to the Board that he took a deal due to lack of ability to hire an attorney is contradicted by the court records received in this case. They show that he had private counsel throughout the many months that the criminal case was pending against him and his 18 co-defendants.² Indeed, his attorney handled a bail hearing for Respondent, as well as a two-day preliminary hearing in October 2006. Respondent was able to procure a \$100,000 bail bond, and had paid \$60,000 in restitution by the time he entered his plea in October 2007.

² The case was filed against Respondent and the other defendants in February 2006, so that Respondent was represented for 18 months by a private attorney. That same attorney, Jilbert Tahmazian, represented Respondent in March 2010 when the court granted relief pursuant to Penal Code section 1203.4.

10. Respondent pointed out that he received his college degree in 2010, and passed the pharmacy technician's test on the first try. He is now married, and has a small child. It appears from the documents that he lives with his sister, the one involved in the theft ring. He has done some community service, tutoring children as a volunteer at a school operated by his sister-in-law. He is currently self-employed, being a part-owner of a firm that sells athletic gear.

LEGAL CONCLUSIONS

1. (A) Respondent has been convicted of a crime that is substantially related to the duties, qualifications, and functions of a pharmacy technician, based on Factual Findings 3, 5, and 7, and California Code of Regulations (CCR), title 16, section 1770.

(B) Respondent argued that the Board had not carried its burden of connecting the crime to the qualifications of a pharmacy technician. That argument was specious. Honesty and integrity are required of any professional, especially one entrusted with dangerous drugs, and sensitive personal information such as medical records, social security numbers, and data authorizing insurance payments or access to benefits such as Medi-Care and Medi-Cal. The crime of insurance fraud, by its very nature, indicates dishonesty and a lack of integrity, and it plainly is a crime of moral turpitude. (*In re Rothrock* (1944) 25 Cal.2d 588 [crimes of dishonesty, including petty theft, show moral turpitude].) When the facts of Respondent's crime are pondered, his level of dishonesty takes on further dimension, and the connection to the qualifications, duties, and functions of a Board licensee becomes crystal-clear.

2. Cause exists to deny Respondent's application for a pharmacy technician's license pursuant to Business and Professions Code sections 475, subdivision (a)(2), and 480, subdivision (a)(1), and CCR section 1770, for his conviction of a crime substantially related to the duties, qualifications, and functions of a pharmacy technician. This conclusion is based on Legal Conclusion 1 and Factual Findings 3, 5, and 7.

3. Cause exists to deny Respondent's application for a pharmacy technician's license pursuant to Business and Professions Code sections 475, subdivision (a)(3), and 480, subdivision (a)(2), in that he committed acts that involved dishonesty, fraud, and deceit, with intent to substantially benefit himself or another, or to substantially injure another. This conclusion is based on Factual Findings 3, 5, and 7.

4. A conviction does not always bar an application for any professional or occupational license. Where the applicant can show sufficient rehabilitation, a license may issue. Here Respondent has some provided some evidence of rehabilitation, in that he completed his criminal probation, paid his restitution, obtained a college degree, and seems to have supported himself. However, he has failed to take responsibility for his actions, attempting to mislead the Board into believing he was just in the wrong place at the wrong time, working for others and now paying for the sins of strangers. As Factual Findings 8 and

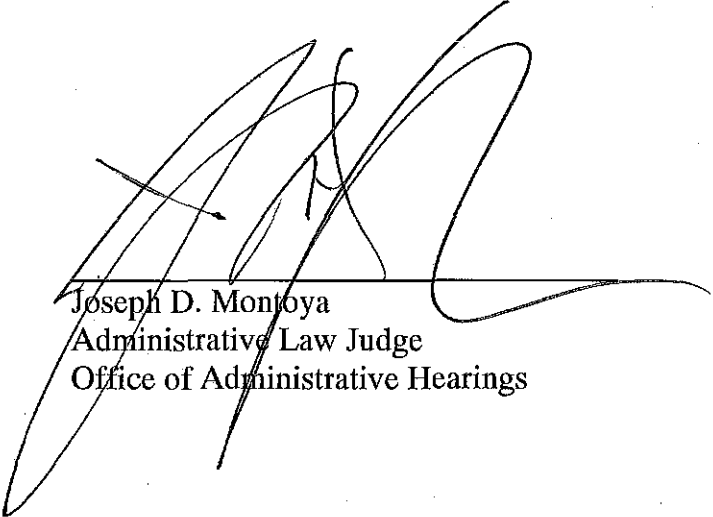
9 reveal, that is simply not the case. Not only did Respondent try to deflect responsibility for the underlying crimes that he was involved in, he affirmatively misrepresented the circumstances of how his plea came to be entered. Such conduct is not that of a repentant and reformed individual; it is the polar opposite. The law has long recognized that full acknowledgement of the wrongful nature of past conduct is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 1041, 1058.) Respondent has yet to take that step, and more than academic success and technical training is needed to establish rehabilitation when one has been involved in an elaborate scheme to steal, and to defraud others.

5. The purpose of proceedings of this type is to protect the public, and not to further punish an errant applicant. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) On this record, it is clear that public protection requires denial of Respondent's application. He may reapply at a later date, as the law otherwise allows.

ORDER

The application of Respondent Gayk Gevorkyan for a pharmacy technician's registration is denied.

February 12, 2013




Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 4139

12 **GAYK GEVORKYAN**
13 

STATEMENT OF ISSUES

14
15 **Applicant for Pharmacy Technician**
Registration

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 September 13, 2010, the Board of Pharmacy, Department of Consumer
23 Affairs (Board) received an application for Registration as a Pharmacy Technician from Gayk
24 Gevorkyan (Respondent). On or about September 8, 2010, Gayk Gevorkyan certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on April 29, 2011.

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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 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 5. Section 475 of the Code states:

11 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
12 govern the denial of licenses on the grounds of:

13

14 (2) Conviction of a crime.

15 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
16 to substantially benefit himself or another, or substantially injure another.

17 (4) Commission of any act which, if done by a licentiate of the business or
18 profession in question, would be grounds for suspension or revocation of license."

19 6. Section 480 states:

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

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

28

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

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

5 **REGULATORY PROVISIONS**

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

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 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Criminal Conviction)**

15 8. Respondent's application is subject to denial under sections 475 and 480, subdivision
16 (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that
17 Respondent was convicted of a crime substantially related to the qualifications, functions or
18 duties of a pharmacy technician applicant, as follows:

19 a. On or about October 24, 2007, after pleading nolo contendere, Respondent was
20 convicted of one felony count of violating Penal Code section 550(a)(4) [insurance fraud], in the
21 criminal proceeding entitled *The People of the State of California vs. Gayk Gevorkyan* (Super. Ct.
22 Los Angeles County, 2007, No. BA29806803). The Court placed Respondent on probation for a
23 period of 3 years with certain terms and conditions. On July 30, 2009, probation was terminated
24 pursuant to Penal Code section 1203.3. Restitution of \$117,000.00 was paid. The circumstances
25 surrounding the conviction are that in 2005, the Los Angeles Police Department working in
26 conjunction with several State and Federal Law Enforcement Agencies, including the Federal
27 Bureau of Investigations (FBI), the Department of Homeland Security (ICE) and U.S.
28 Immigration and Customs Enforcement, began an investigation into a Glendale based company,

1 Global Human Service. Authorities uncovered evidence which suggested that numerous vehicles
2 were being shipped out to the United States via Global Human Services in compartments of
3 shipping containers under the guise of "humanitarian aid" bound for Armenia. The persons
4 operating Global Human Service (GHS) contracted with Maersk Sealand, a large steamship
5 company, to provide empty 40-foot long steel ocean containers to their business. The containers
6 were then loaded with their contents at the GHS Glendale location. Respondent was employed in
7 the family business, Global Human Service, from where the conspiracy was conducted with other
8 defendants. Respondent's fingerprints were located inside one of the stolen vehicles and on the
9 outside of another one of the stolen vehicles. The fingerprints of two other defendants were
10 located on some of the stolen vehicles. Respondent unlawfully conspired together with other
11 suspects to commit insurance fraud.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(Unprofessional Conduct)**

14 9. Respondent's application is subject to denial under section 480, subdivision (a)(3) on
15 the grounds of unprofessional conduct. The circumstances are that Respondent committed acts
16 which constitute unprofessional conduct when he conspired together with other suspects to
17 commit insurance fraud. Complainant refers to, and by this reference incorporates, the
18 allegations set forth above in paragraph 9, subparagraph (a), inclusive, as though fully set forth
19 herein.

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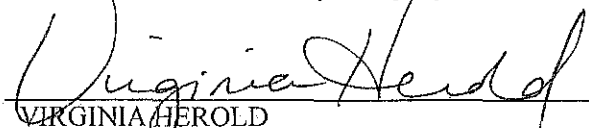
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PRAYER

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 Gayk Gevorkyan for a Pharmacy Technician Registration;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/12/12



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

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