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

In the Matter of the Statement of Issues Against: **STEPHANIE MONIQUE GONZALES** Pharmacy Technician Registration Applicant Respondent.	Case No. 4203 OAH 2012070625

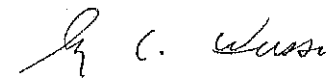
DECISION AND ORDER

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: STEPHANIE MONIQUE GONZALES, Respondent.	Case No.: 4203 OAH No.: 2012070625

PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings on November 6, 2012, at Los Angeles, California.

Christina Felix, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented herself.

Oral and documentary evidence was received and argument was heard.

The case was deemed submitted on November 6, 2012.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Virginia Herold, Complainant herein, brought the Statement of Issues in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On August 17, 2010, the Board of Pharmacy (Board) received an application for a Pharmacy Technician from Stephanie Monique Gonzales, Respondent herein. On August 11, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

3. The Board denied the application on August 22, 2011. Respondent timely appealed the Board's denial. All pre-hearing jurisdictional requirements have been met by the parties. Jurisdiction for this proceeding exists. Administrative proceedings before the Department are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500, *et seq.*

Criminal Conviction

4. In December, 2009, Respondent worked for Target stores as a cashier in a position of trust. Over a period of time during December Respondent, while working as a cashier, passed items of Target merchandise to friends without charging them for the merchandise. Respondent's wrongful conduct lead to the conviction set forth in Finding 5.

5. On December 31, 2009, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft], in the criminal proceeding entitled *The People of the State of California v. Stephanie Monique Gonzales* (Super. Ct. San Bernardino County, 2009, No. 9WW07835. The court placed her on 36 months summary probation, with terms and conditions.

6. On December 1, 2010, Respondent and her cousin Ashley Jaslene Gonzales (Ashley) entered a Kohl's Department store. Ashley, with intent to steal, attempted to leave Kohl's with a number of store items of merchandise. Respondent was in the company of Ashley and was aware of Ashley's conduct. Ashley exited the store with the stolen items. Respondent, after paying for a roll of wrapping paper exited Kohl's behind Ashley. Police responded to the call from Kohl's security personnel who had observed Respondent and Ashley on Kohl's surveillance CCTV (closed circuit television) and detained Respondent and Ashley.

7. As a result of the conduct set forth in Finding 6 in Superior Court Case No. 0BF05813 a two count misdemeanor complaint pursuant to Penal Code section 17(b) 4 issued as follows:

COUNT 1

> On or about December 1, 2010, in the County of Los Angeles, the crime of second degree commercial burglary, in violation of Penal Code section 459, a misdemeanor, was committed by Ashley Jaslene Gonzales, who did enter a commercial building occupied by Kohl's with the intent to commit larceny and any felony.

* * * * *

COUNT 2

> On or about December 1, 2010, in the County of Los Angeles, the crime of petty theft, in violation of Penal Code section 484, subdivision (a), a misdemeanor, was committed by Ashley Jaslene Gonzales and Stephanie Monique Gonzalez, who did unlawfully steal, take and carry away the personal property of another, to wit, Kohl's.

8. On April 14, 2011, during proceedings on the complaint the court, in apparent recognition of Respondent's incidental role in the theft amended the complaint to add Count 3 (a violation of Penal Code section 415). Thereafter, with the court's approval on said April 14, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section 415, subdivision (l) [fighting in a public place], in the criminal proceeding entitled *The People of the State of California v. Stephanie Monique Gonzales* (Super. Ct. Los Angeles County, 2011, No. 0BF05813). The court placed Respondent on three years summary probation, with terms and conditions.

9. Findings 5 and 8, separately and taken together are substantially related[1] to the qualifications, functions or duties of a person holding the applied-for-license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license as a pharmacy technician to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

Consequent Conduct

10. Respondent committed acts – Findings 4 and 6 – which if done by a licentiate would be grounds for suspension or revocation of her license.

11. The conduct set forth in Finding 4 constitutes dishonest acts, with the intent to substantially benefit herself and substantially injure another.

Mitigation

12. At the time of the theft (Finding 5) Respondent was 18 years of age and – as is obvious – her "friends" were a bad influence. At the time of the misdemeanor referenced in Finding 8 Respondent was still in her youth. Her, cousin four years older, was – as is obvious – a bad influence. These circumstances do not excuse the wrongful conduct but do mitigate same.

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[1] California Code of Regulations, title 16, section 1770.

Aggravation

13. Despite her youth Respondent had knowledge of Ashley's intent to steal and in the exercise of due diligence did nothing to prevent the theft. Additionally, Respondent was still on probation for the 2009 misdemeanor when the theft occurred.

Rehabilitation and Character

14. Respondent has completed all court order mandates with regard to the 2009 misdemeanor and successfully completed probation. With regard to the 2011 misdemeanor Respondent has completed all court ordered mandates, including fully performing 160 hours of community service for CalTrans but remains on probation until 2013.

15. Respondent has suffered no other conviction. She is, at present, in conformity to society's norms and rules of civil behavior. She now works in a position of trust as a dispatcher for Best Overnight Express, a wide-ranging truck company. She there works with fealty and trustworthiness.

16. Respondent did complete the necessary course of study for the applied-for-license at Everest College in August, 2010 maintaining throughout her study a high grade point average. She did thereafter take and pass the licensing examination.

17. Respondent, together with her younger sister, lives with her diabetic grandparents. She assists her grandparents with activities of daily living.

18. Respondent was open and honest with the Board in the application process. Respondent's testimony two open, honest and candid and she demonstrated by her remorseful demeanor contrition for her past wrongful conduct. During the course of her maturation she has a change in attitude and she has re-oriented her moral compass.

LEGAL CONCLUSIONS

Violations

1. Respondent's application is subject to denial under Business and Professions Code (Code) sections 4301, subdivision (l) and 480, subdivision (a)(1), in that Respondent was convicted of substantially related crimes, as is set forth in Findings 5 and 8 combined with Finding 9.

2. Cause exists for license denial pursuant to Code sections 4301, subdivision (p) and 480 subdivision (a) (3) (A) and (a) (3) (B) by reason of Findings 5, 8 and 9 combined with Finding 10.

3. Cause exists for license denial pursuant to Code section 480, subdivision (a) (2) by reason of Findings 5 and 9 combined with Finding 11.

Licensing Considerations

4. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate disposition of the matter. Additionally, the objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board.[2] The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

5. California Code of Regulations, title 16, section 1769, subdivision (a), a regulation of the Board entitled Criteria of Rehabilitation, states in pertinent part:

> (a) When considering the denial . . .of a license . . . the board in evaluating the rehabilitation of the applicant and his present eligibility for a licensing or registration will consider the following criteria:
>
> (1) The nature of severity of the act(s) or offenses 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 suspension or 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) referenced 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.

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[2] *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

6. In the same sequential order:

(1) The 2009 misdemeanor involved dishonesty, the antithesis of conduct required of a pharmacy technician.

(2) None.

(3) The misdemeanors are recent.

(4) Respondent is still on probation.

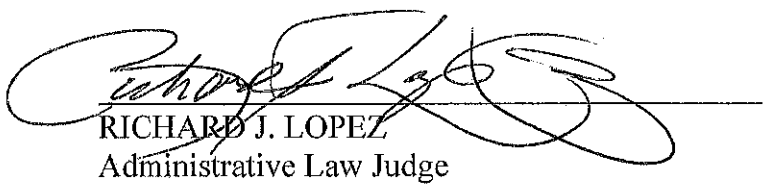
(5) Respondent has established the significant rehabilitation set forth in Findings 14 through 19 together with mitigation (Finding 12) and aggravation (Finding 13).

7. Pages 43 through 54 of the 91 page Guidelines relate to Pharmacy Technicians, and the requirements of such licensee. Respondent is commended for her rehabilitation to date. However, neither misdemeanor has been expunged and she still must complete probation. Additionally, with any subsequent application, Respondent should present evidence to the Board of a change in social relationships (friends) and proffer character attestations on her behalf. In sum, under the Guidelines, it is too soon for licensure.

ORDER

The application of Stephanie Monique Gonzales for licensure of a Pharmacy Technician is hereby denied.

Dated: December 5, 2012



RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:ref

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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **STEPHANIE MONIQUE GONZALES** 9639 Haney Street Pico Rivera, CA 90660 Respondent.	Case No. 4203 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about August 17, 2010, the Board of Pharmacy (Board) received an application for registration as a Pharmacy Technician from Stephanie Monique Gonzales (Respondent). On or about August 11, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 22, 2011.

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JURISDICTION

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

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

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

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

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

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

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

5. Section 490 states, in pertinent part:

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

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(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

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

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to disciple, including suspension or revocation.

7. 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:

. . . .

(f) 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.

. . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order

to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

REGULATORY PROVISIONS

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

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree 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."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Crimes)

9. Respondent's application is subject to denial under section 480, subdivision (a)(1), and section 4301, subdivision (l), in that Respondent was convicted of crimes, as follows:

a. On or about April 14, 2011, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 415, subdivision (1) [fighting in a public place], in the criminal proceeding entitled *The People of the State of California v. Stephanie Monique Gonzales* (Super. Ct. Los Angeles County, 2011, No. 0BF05813). The Court placed Respondent on 3 years probation, with terms and conditions. The

circumstances surrounding the conviction are that on or about December 1, 2010, Respondent entered Kohls, selected several items of clothing, and exited the store, without paying for the merchandise. Respondent was subsequently arrested for violating Penal Code section 484 [petty theft].

b. On or about December 31, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft], in the criminal proceeding entitled *The People of the State of California v. Stephanie Monique Gonzales* (Super. Ct. Los Angeles, 2009, No. 9WW07835). The Court sentenced Respondent to serve 1 day in Los Angeles County Jail and placed her on 36 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about December 13, 2009, Respondent unlawfully stole, took, and carried away the personal property of another, to wit: Target.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (b), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

11. Respondent's application is subject to denial 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 licentiate of the business and profession, would be grounds for suspension or revocation of her license, as follows:

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a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) and (b), inclusive, as though set forth fully.

b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (b), as though set forth fully.

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: 5/29/12

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

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