

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

In the Matter of the Statement of Issues
Against:

HOWARD VERN PULVER

Pharmacist Applicant

Respondent.

Case No. 4212

OAH 2012040549

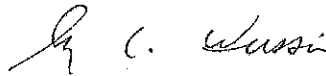
DECISION AND ORDER

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:

HOWARD VERN PULVER,
Glendale, AZ 85310

Respondent.

Case No. 4212

OAH No. 2012040549

PROPOSED DECISION

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on November 5, 2012.

Anahita S. Crawford, Deputy Attorney General, represented complainant, Virginia K. Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

There was no appearance by or on behalf of Howard Vern Pulver (respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on November 5, 2012.

FACTUAL FINDINGS

1. The Board received respondent's Application for Pharmacist Licensure and Examination on February 11, 2011. The Board denied the application on October 31, 2011, and respondent filed a timely appeal.

2. Complainant, acting solely in her official capacity as the Executive Officer of the Board, filed the Statement of Issues on or about March 19, 2012, seeking to deny respondent's application on the grounds that disciplinary action was taken against his pharmacist license by the Arizona Board of Pharmacy. The Statement of Issues was served on respondent by certified and first class mail. Respondent returned the Domestic Return Receipt on or about April 12, 2012. The

Notice of Hearing was served on respondent by certified and first class mail. Respondent signed and returned the Domestic Return Receipt on May 24, 2012.

3. This matter was called on the date and at the time and location specified in the Notice of Hearing. Respondent did not appear and no one appeared on his behalf. The hearing proceeded as a default pursuant to Government Code section 11520.

Disciplinary Action by Arizona Board of Pharmacy

4. On September 17, 2009, before the State of Arizona Board of Pharmacy, Board Case No. 09-0035-PHR, respondent entered into a Consent Agreement and Order for Suspension of his pharmacist license, Pharmacist License No. S015422. The Consent Agreement included the following Findings of Fact by the Arizona Board of Pharmacy:

- a. Respondent worked as a pharmacist at Wal-Mart Pharmacy (#1532) in Glendale, Arizona.
- b. In November 2008, respondent was observed on video stealing \$80.00 from the accounting office at the Wal-Mart store.
- c. In October 2008, respondent was observed on video using unauthorized coupons to load Wal-Mart gift cards. Prescription coupons had been used when a new customer transferred their prescriptions to Wal-Mart from another pharmacy. Use of prescription coupons was discontinued in July 2008. Respondent had Wal-Mart employees load gift cards for the dollar amount shown on the coupon.
- d. Respondent used the improperly loaded gift cards to purchase prescription medications and merchandise from Wal-Mart. Wal-Mart estimated its total loss due to respondent's gift card activity to be \$1,642.
- e. Respondent made unauthorized price overrides at Wal-Mart. On one transaction, respondent made a price override on a camera from \$149 to \$79. Respondent then used improperly loaded gift cards to purchase the camera. Respondent also made a price override on two MP3 players, two bikes, and a microwave. Wal-Mart estimated its total loss due to respondent's price overrides to be \$296.61.

- f. Respondent took merchandise, mostly food and drink items, from Wal-Mart without paying for them.
- g. Respondent falsified numerous prescriptions and their refills for himself, including prescriptions for Prop-N/APAP (dextropropoxyphene), Cheratussin AC Syrup (cough syrup with codeine), Meloxicam 7.5 mg (prescription-only), Atenolol 100 mg (prescription-only), and Allopurinol 100 mg (prescription-only).
- h. Respondent falsified a prescription for his wife for Propo-N/APAP (dextropropoxyphene).
- i. Respondent refilled numerous prescriptions for himself without authorization including refills for Balacet® 325 (dextropropoxyphene) and lorazepam 0.5 mg.
- j. Respondent changed the quantity of medication prescribed for his daughter without authorization, including changing prescription number 651956 for albuterol 0.083 percent (prescription-only) from #50 to #150 and prescription number 6505789 for alburterol (prescription-only) 0.083 percent from #50 with three refills to #150 with three refills.
- k. Dextropropoxyphene is a Schedule IV controlled substance. (A.R.S. § 36-2515, subd. (A)(5)(b)).
- l. Lorazepam is a Schedule IV controlled substance. (A.R.S. § 36-2515, subd. (A)(2)(aa)).
- m. Cough syrup with codeine is a Schedule V controlled substance. (A.R.S. § 36-2516, subd. (1)(a)(a)).

5. The Consent Agreement also contained the following Legal Conclusions by the Arizona Board of Pharmacy:

Respondent's practice and conduct constituted unprofessional conduct, in that:

- a. Respondent violated federal or state law, rule or regulation relating to the practice of pharmacy.
- b. Respondent committed a felony, whether or not involving moral turpitude, or a misdemeanor involve moral turpitude or any drug related offense.

- c. Respondent violated a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in federal or state court.
- d. Respondent knowingly dispensed drugs without a valid prescription order.

Furthermore, the Arizona Board of Pharmacy also set forth in its Legal Conclusions, that:

- e. Respondent's conduct constituted a violation of Arizona Revised Statutes, section 32-1968, subdivision (A), which provides, in part, that a prescription-only drug shall be dispensed only under one of the following conditions: (1) by a medical practitioner; (2) on a written prescription order bearing the medical practitioner's signature; (3) on an electronically transmitted prescription order containing the prescribing medical practitioner's electronic or digital signature; (4) on a written prescription order generated from electronic media containing the prescribing medical practitioner's signature; (5) on an oral prescription order that is reduced promptly to a writing and filled by the pharmacist.
- f. Respondent's conduct constituted a violation of Arizona Revised Statutes, section 13-1802, subdivision (A)(1), which provides, in part, that a person commits theft if, without lawful authority, the person knowingly controls another person's property with the intent to deprive that person of such property.

6. Respondent's Arizona pharmacist license was suspended for a period of six months, and respondent was ordered to: successfully complete the "MPJE" examination and provide proof of successful completion to the Arizona Board of Pharmacy; pay all necessary fees and complete all continuing education requirements throughout the term of his suspension; and furnish the Arizona Board of Pharmacy a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy.

Factors in Aggravation, Mitigation, and Rehabilitation

7. In his application for licensure, respondent attached a required letter of explanation, dated February 7, 2011, regarding the Arizona Board of Pharmacy's disciplinary action against him. Respondent stated:

I was sanctioned in AZ for misinterpretation of prescription refills when I entered them in the computer. The right drug was picked out but an extra refill was added based on the way I was entering them. I was also sanctioned for the misuse of gift cards.

Respondent failed to provide the details of the Arizona disciplinary action, as clearly set forth in the Consent Agreement and Order for Suspension, and failed to provide the reasons why he committed the acts as set forth in Finding 4.

8. Respondent is 40 years old. He committed the acts which led to the Arizona Board of Pharmacy's disciplinary action when he was 36.

9. No other evidence was offered in extenuation, mitigation, or rehabilitation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 allows the Board to deny an application for a license if the applicant has done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of the license. (Bus. & Prof. Code, § 480, subd. (a)(3)(A).)

2. 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 includes the "revocation, suspension, or other discipline by another state of a license to practice pharmacy..." (Bus. & Prof. Code, § 4301, subd. (n).)

Cause for Denial

3. Cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), in that respondent committed acts as a licentiate, which were grounds for his suspension (in Arizona), as set forth in Finding 4.

Rehabilitation

4. The Board has adopted rehabilitation criteria which are to be considered when deciding whether to deny an application for a license. (Cal. Code Regs., tit. 16, § 1769.) The criteria are:

- 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 appellant.
- 5) Evidence, if any, of rehabilitation submitted by the applicant.

5. Respondent's acts were serious, in that he stole cash, merchandise, and prescription medications from the Wal-Mart store where he was employed. He also falsified and changed controlled substance prescriptions for himself and his family, and refilled them without authorization. In his letter to the Board, respondent provided little or no explanation about the facts and circumstances of his conduct as a pharmacist at Wal-Mart, and what he provided to the Board did not reflect the Findings by the Arizona Board of Pharmacy. The disciplinary action against respondent in Arizona is recent, having occurred only three years ago. Despite filing an appeal of the Board's denial, respondent failed to appear at the hearing in this matter. For these reasons, and those set forth in Findings 4 to 9, respondent has failed to establish that he is sufficiently rehabilitated that it would be in the public's interest to issue him a pharmacy license, even on a probationary basis.

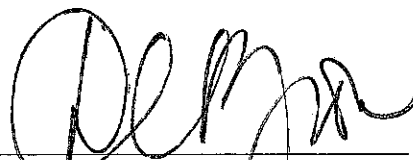
Conclusion

6. When all the facts and circumstances are weighed and balanced, it is contrary to the public interest to grant respondent a license at this time.

ORDER

Respondent Howard Vern Pulver's application for a pharmacy license is DENIED.

DATED: December 5, 2012

A handwritten signature in black ink, appearing to read 'D. Brown', written over a horizontal line.

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643

7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against:

Case No. 4212

13 **HOWARD VERN PULVER**
4115 West Chama Drive
14 Glendale, AZ 85310

STATEMENT OF ISSUES

15
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 February 11, 2011, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacist License from Howard Vern Pulver (Respondent).
24 On or about February 8, 2011, Howard Vern Pulver certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on October 13, 2011.

27 ///

28 ///

1 **JURISDICTION**

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 **STATUTORY PROVISIONS**

6 4. Section 480 states in part, that:

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

9 ...

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

13 5. Section 4301 of the Code states:

14 The board shall take action against any holder of a license who is guilty of
15 unprofessional conduct or whose license has been procured by fraud or
16 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
17 not limited to, any of the following:

18 ...

19 (n) The revocation, suspension, or other discipline by another state of a license
20 to practice pharmacy, operate a pharmacy, or do any other act for which a license is
21 required by this chapter.

22 **CAUSE FOR DENIAL OF APPLICATION**
23 **(Out of State Discipline)**

24 6. Respondent's application is subject to denial under section 480, subsection (a)(3) for
25 violation of section 4301, subsection (n) in that on or about November 19, 2009, in the
26 disciplinary matter of *Howard Pulver, Holder of License No. S015422*, case No. 09-0035-PHR,
27 before the Arizona State Board of Pharmacy, Respondent's license to practice was suspended for
28 6 months.

The circumstances are as follows: On or about November 17, 2009, Respondent entered
into a consent agreement with the Arizona State Board of Pharmacy. The consent agreement
found that in or about 2008, Respondent stole money from his employer, Wal-Mart. Further, the
consent agreement found that Respondent used unauthorized coupons to load Wal-Mart gift

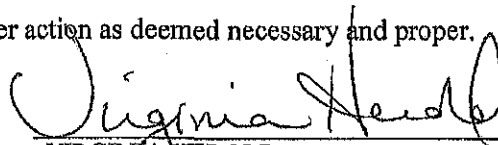
1 cards; used said gift cards to purchase prescriptions and merchandise from Wal-Mart; performed
2 unauthorized price overrides on Wal-Mart purchases; took merchandise from Wal-Mart without
3 paying for them; and falsified prescriptions and their refills for himself and his wife by changing
4 the quantity of the medication and the number of refills available.

5 PRAYER

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

- 8 1. Denying the application of Howard Vern Pulver for a Pharmacist License;
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 3/19/12



11 VIRGINIA HEROLD
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 Complainant

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