

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

In the Matter of the Statement of Issues
Against:

DOVE MONIQUE CAWTHON

Applicant

Respondent.

Case No. 4286

OAH No. 2012120130

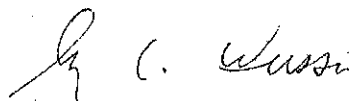
DECISION AND ORDER

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 October 4, 2013.

It is so ORDERED on September 4, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings on May 30, 2013, at Los Angeles, California.

Geoff Ward, 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 May 30, 2013.

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 (Board), Department of Consumer Affairs.

2. On February 15, 2011, the Board received an application for a Pharmacy Technician License from Dove Monique Cawthon, Respondent herein. On December 17, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

Procedure

3. The Board denied the application on December 20, 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.*

4. On January 22, 2013, Respondent filed a motion to continue the original hearing date of February 4, 2013. Complainant did not oppose the continuance. Good cause existing the motion to continue the February 4, 2013, hearing to 9:00 a.m., on May 30, 2013, at the Office of Administrative Hearings, 320 West 4th Street, Suite 630, Los Angeles, California 90013 was granted.

Criminal Conviction

5. On March 10, 2009, Los Angeles Police Department Officers (Police) responded to a theft report made by Respondent's mother, alleging that Respondent stole a laptop computer from her mother's tenant. Upon arrival, Police questioned Respondent who admitted to the Police that she did, in fact, steal the laptop with her boyfriend Sergio Salazar in order to sell it and obtain methamphetamine.¹ Respondent also admitted to the Police that she did smoke or otherwise use said drug on the previous day. Criminal proceedings were filed against Respondent and Salazar. Respondent's resulting conviction is set forth in the next Finding.

6. On March 12, 2009, in a criminal proceeding entitled *People v. Monique Cawthon* in Los Angeles Superior Court, Case Number 9BF0129202, Respondent was convicted by plea of nolo contendere of violating Penal Code section 487, subdivision (a), commission of grand theft, a misdemeanor.

Substantial Relationship

7. Penal Code sections 486 and 487, subdivision (a) provide:

486. Theft is divided into two degrees, the first of which is termed grand theft; the second, petty theft.

487. Grand theft is theft committed in any of the following cases:

¹ A Schedule II controlled substance under Health and Safety Code section 11055, subdivision (d)(2), that is, a dangerous drug.

- (a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950.0), except as provided in subdivision (b).

8. The acts set forth in Finding 5 and the conviction set forth in Finding 6, separately and taken together, are substantially related² 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

9. As is set forth in Finding 5 Respondent admitted to self-administering methamphetamine. Such conduct is unprofessional conduct.

Mitigation

10. At the time of the theft (Finding 5) Respondent was 26 years of age and Salazar was 41 years of age and Salazar was – as is obvious – a bad influence. That circumstance does not excuse the wrongful conduct but does mitigate same.

Aggravation

11. Respondent admitted – in candid testimony – that prior to the arrest for the conviction that she was a habitual user (daily basis) of methamphetamine thus presenting a clear and present risk to herself and to others.

Rehabilitation and Character

12. Respondent has completed all court ordered mandates with regard to the 2009 misdemeanor and successfully completed three years probation.

13. Respondent has suffered no other conviction. She is, at present, in conformity to society's norms and rules of civil behavior.

14. Respondent did complete the necessary course of 240 hours of instruction study for the applied-for-license at Career Colleges of America in February 2011.

² California Code of Regulations, title 16, section 1770.

15. Respondent is now the mother of her only child, an eight month old infant, Liliana. She and Liliana live with her parents. Respondent is a careful, concerned and competent parent. At present Respondent has stability of family life and fulfills parental and familial responsibilities.

16. Respondent, in a good faith effort to change, was baptized at the Emmanuel Reformed Church on June 24, 2012 and received a Certificate of Baptism and a Certificate of Membership from the Church on the same day.

17. Respondent was accompanied to the hearing – in a show of support – by her father, Pastor Ivan Cawthon of the Tower of Faith Evangelistic Church and a long time friend of the Cawthon family, Kenneth Tucker. Both credibly testified to Respondent’s good faith efforts of reformation and to her present stable life free of “bad” friends and drug use. Both, along with other family members and friends provide a strong support group for Respondent.

18. Respondent was open and honest with the Board in the application process. Respondent’s testimony was 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.

19. Notwithstanding Findings 12 through 18, the crime *per se*, involves moral turpitude. Given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for continued licensure. The time since the conviction is not sufficient to establish such rehabilitation as is demonstrated in the Findings which follow.

20. In her testimony Respondent understated the gravity of the theft and her association with Salazar. She referred to the theft as “a mistake.” There is insufficient evidence of new and different social and business relationships from those which existed at the time of the crime.

21. There was no evidence from a present or prospective employer with knowledge of the conviction or Respondent’s prior drug use.

22. The conviction is not yet expunged pursuant to Penal Code section 1203.4.

23. Respondent’s testimony that she has abstained from drug abuse since the arrest was credible. However, there was no documentation of sustained attendance at a recognized 12-Step recovery program such as Narcotics Anonymous; there was no documentation of recent negative testing for drug use; there was no testimony from a 12-Step Sponsor.

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LEGAL CONCLUSIONS

Application of Law to Facts

1. Respondent's application is subject to denial under Business and Professions Code (Code) sections 4300, subdivision (c) and 480, subdivision (a)(1) and 4301, subdivision (e), in that Respondent was convicted of a substantially related crime, as is set forth in Finding 6 combined with Finding 8.

2. Cause exists for license denial pursuant to Code sections 4301, subdivision (h) and 480 subdivision (a) (3) (A) and 4300, subdivision (c) by reason of Finding 5 combined with Finding 9.

Licensing Considerations

3. 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.³ 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.

4. 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 *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.

- (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.

5. In the same sequential order:

- (1) The 2009 misdemeanor involved dishonesty, the antithesis of conduct required of a pharmacy technician. Additionally, there is no documentation of a recovery from habitual use of methamphetamine.
- (2) None.
- (3) The misdemeanor is four years remote.
- (4) Completion of probation is recent. Respondent did fully comply with conditions thereof.
- (5) Respondent has established the significant rehabilitation set forth in Findings 12 through 18 together with mitigation (Finding 10) and aggravation (Finding 11).

6. Pages 43 through 54 of the 91 page Guidelines relate to Pharmacy Technicians, and the requirements of such a licensee. Respondent is commended for her rehabilitation to date. However, the misdemeanor has not been expunged and there is no documentation of present sobriety. Additionally, with any subsequent application, Respondent should present evidence to the Board of a change in social relationships (friends). In sum, Respondent is presently a person of good character, however under the Guidelines, it is too soon for licensure.

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ORDER

The application of Dove Monique Cawthon for licensure as a Pharmacy Technician is hereby denied.

Dated: June 25 2013



RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:ref

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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. 4286

12 **DOVE MONIQUE CAWTHON**

STATEMENT OF ISSUES

13 **14027 Fidler Ave**
14 **Bellflower, CA 90706**

15 **Applicant for Pharmacy Technician License**

16 Respondent.

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 February 15, 2011, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician License from Dove Monique Cawthon
23 ("Respondent"). On or about December 17, 2010 Ms. Cawthon certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on December 20, 2011.

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27 ///

JURISDICTION

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

4. In pertinent part, Section 480 authorizes certain boards, including this one, to deny
applications based on criminal convictions substantially related to the profession for which they
apply:

"(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.

(b) Notwithstanding any other provision of this code, no person shall be
denied a license solely on the basis that he or she has been convicted of a felony if he
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

(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."

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1 5. Section 4300 subdivision (c) authorizes the Board to deny license applications or to
2 grant probationary licenses to applicants who commit unprofessional conduct:

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

- 9 (1) Medical or psychiatric evaluation.
- 10 (2) Continuing medical or psychiatric treatment.
- 11 (3) Restriction of type or circumstances of practice.
- 12 (4) Continuing participation in a board-approved rehabilitation program.
- 13 (5) Abstention from the use of alcohol or drugs.
- 14 (6) Random fluid testing for alcohol or drugs.
- 15 (7) Compliance with laws and regulations governing the practice of
16 pharmacy.”

17 6. Section 4301 of the Code authorizes the Board to discipline licensees for
18 unprofessional conduct and lists examples of unprofessional conduct:

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

23 ...

24 (h) The administering to oneself, of any controlled substance, or the use
25 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
26 dangerous or injurious to oneself, to a person holding a license under this chapter, or
27 to any other person or to the public, or to the extent that the use impairs the ability of
28 the person to conduct with safety to the public the practice authorized by the license.

...

(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

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.”

3 7. Section 4313 of the Code provides guidance for considering an applicant’s
4 rehabilitation:

5 “In determining whether to grant an application for licensure or whether
6 to discipline or reinstate a license, the board shall give consideration to evidence of
7 rehabilitation. However, public protection shall take priority over rehabilitation and,
8 where evidence of rehabilitation and public protection are in conflict, public
9 protection shall take precedence.”

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(Conviction of a Crime)**

12 9. Respondent's application is subject to denial under sections 480(a)(1), 4300(c) and
13 4301(l) in that on or about March 12, 2009, in a criminal proceeding entitled *People v. Monique*
14 *Cawthon* in Los Angeles Superior Court, Case Number 9BF0129202, Respondent was convicted
15 by plea of nolo contendere of violating Penal Code Section 487(a), commission of grand theft, a
16 misdemeanor. She was sentenced to 10 days in jail and ordered to pay \$100 in restitution. The
17 circumstances are as follows:

18 a. On or about March 10, 2009, Los Angeles Police Department officers
19 responded to a theft report made by Respondent’s mother. She alleged Respondent stole a laptop
20 computer from her tenant. Upon arrival, police questioned Respondent who admitted to stealing
21 the laptop with her boyfriend in order to sell it and obtain methamphetamine. Respondent also
22 admitted to smoking methamphetamine on the previous day, March 9, 2009.

23 b. On or about March 12, 2009, Respondent was sentenced to ten days in Los
24 Angeles County Jail, three years’ probation, and ordered to pay \$100 in restitution.

25 10. Respondent’s conviction for grand theft in March 2009 is “substantially related to the
26 qualifications, functions, and duties of a licensee” because pharmacy technicians have access to
27 valuable controlled substances, some of which can be diverted for personal use or sale.

28 **SECOND CAUSE FOR DENIAL OF APPLICATION**

(Unprofessional Conduct)

11. By committing the acts alleged in paragraph 9 above, which is realleged and
incorporated into this cause for denial, Respondent's application is subject to denial under


1 sections 480(a)(3)(A), 4300(c), and 4301(h) because she admitted to self-administering
2 methamphetamine, a Schedule II controlled substance under section 11055(d)(2) of the Health
3 and Safety Code.

4 PRAYER

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

- 7 1. Denying the application of Dove Monique Cawthon for a Pharmacy Technician
8 License;
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 8/29/12

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

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