

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

In the Matter of the Statement of Issues Against:

RANSON LEE BARRET SPARROW

Pharmacy Technician Applicant

Respondent.

Case No. 4293

OAH No. 2012110168

DECISION

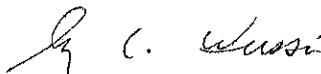
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the caption box of the Proposed Decision, is hereby modified for technical reasons as follows:

“In the Matter of the Statement of Issues Against:”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on June 20, 2013.

IT IS SO ORDERED this 21st day of May, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

**BEFORE THE
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RANSON LEE BARRET SPARROW

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OAH No. 2012110168

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on March 4, 2013, in Los Angeles, California.

Deputy Attorney General Mathew A. King represented complainant. Ranson Lee Barrett Sparrow (respondent) was represented by Charlie Hill, Attorney at Law.

Evidence was received and record was left open to allow respondent to submit letters of reference. Respondent submitted the letters on March 27, 2013. Complainant did not object to the submission. The letters were marked and admitted as Exhibit C. The matter was deemed submitted on March 27, 2013.

FACTUAL FINDINGS

1. Virginia Herold issued the Statement of Issues in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.
2. On May 17, 2011, the Board received an application for registration as a Pharmacy Technician from respondent. The Board denied the application on February 14, 2012.
3. On January 23, 2009, in the Superior Court of California, County of San Bernardino, appellant was convicted on his plea of guilty to one count charging a violation of Penal Code section 12024, possession of a deadly weapon with intent to commit assault, a misdemeanor that is substantially related to the duties, functions and qualifications of a pharmacy technician.

4. Imposition of sentence was suspended and appellant was placed on conditional revocable release for a period of 36 months on certain terms and conditions, including that respondent serve 258 days in the county jail.

5. The facts and circumstances underlying the offense occurred in July 2008 when respondent and three acquaintances went to a neighbor's house and requested to talk to the neighbor's son. By entering a plea of guilty to the offense set forth above, respondent admitted that he possessed a handgun during the incident. Two others in the group also carried handguns. Respondent and the other three individuals left the area and returned a few minutes later during which two of respondent's friends pulled out handguns and began firing their weapons. One round hit the neighbor's brother-in-law and wounded him.

6. Respondent testified that he did not possess a handgun during the incident and that he was not at the scene when the shots were fired. He cites the preliminary hearing testimony of his neighbor which contradicted the neighbor's statement to police officers on the day of the incident. He initially told police officers that he saw respondent exhibit a handgun. However, in his preliminary hearing testimony, the neighbor stated that he did not remember whether respondent exhibited a handgun when he first appeared at the scene and that he could not identify respondent as one of the individuals who returned the second time when the shots were fired. After the preliminary hearing, the prosecutor offered respondent the option of pleading guilty to above referenced misdemeanor count. Respondent testified that he accepted the offer because he did not want to risk going to trial on the original charges which included three counts of attempted murder along with possession of a deadly weapon with a potential sentence of 81 years to life in prison. Although the preliminary hearing transcripts are supportive of respondent's version, his denial of guilt in these proceedings is an impressive collateral attack on his conviction and underlying guilty plea. Based on respondent's guilty plea, the evidence established that respondent was initially at the scene of the crime and was in possession of a handgun with the intent to commit assault. However, it was not established that he returned to the scene with the individuals who fired the shots and wounded the victim. The neighbor's hearsay statement in the police report that respondent returned to the scene when the shots were fired is directly contradicted by his preliminary hearing testimony.

7. Respondent has no other convictions. Respondent was 18 years old at the he committed the offense. Since then respondent has made a good effort to rehabilitate himself. Respondent completed a two year program for a pharmacy technician's certification at UEI College in Ontario, California. He furthered his education by completing a 300 hour internship program at a pharmacy in Ontario. Respondent performed well in the internship. Respondent also held a summer job at Raging Waters from 2009 through 2011.

8. Respondent introduced letters of reference from five individuals. The letters included those written by a deputy public defender, a probation officer, an executive with Boeing Aircraft, and his former employer. The letters are similar in praising respondent's character. For example, Mr. Chrashawn Jackson, Deputy Public Defender for Los Angeles County, attests that the incident set forth in Factual Findings 5 was totally out of character for respondent. Mr. Chrashawn wrote in pertinent part:

Ranson has always shown me that he is a caring, loving and responsible young man. My three daughters have always looked at Ranson as an extended family member. I would NEVER allow him around my family if I didn't think he was a respectful and well-grounded young man. . . . [W]hat impressed me most was how Ranson handled a very difficult time. Never once did he become angry or bitter. He became resolved to move on with his life and continue in his path to become a productive adult. I witnessed Ranson work several jobs while completing school. He was determined to get his pharmacy [technician] license. He even went so far as to move from his immediate neighborhood. He wanted no distractions in completing school. He used a very bad situation as motivation. . . . Ranson has matured into an incredible responsible young man. Instead of using the past incident as an excuse to give up, he's used it as a motivation to fulfill his dream. We encourage young people to get on the right path and work hard. This is exactly what Ranson has done. When you look at his past, the good he has done and the positive role model that he has been outweighs any one incident. If anyone should be given a chance, it is Ranson Sparrow. He is the epitome of using a bad situation as motivation.

LEGAL CONCLUSIONS

1. Grounds exist to deny respondent's application for a pharmacy technician registration under Business and Professions Code section 480, subdivision (a)(3), and California Code of regulations, title 16, section 1770, based on appellant's conviction and the underlying circumstances as set forth in Factual Findings 3 and 4.

2. The Board has the responsibility to protect the public. In discharging this responsibility, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. These guidelines are applied in this case to the extent they are relevant to an application for licensure as follows:

1. *Actual or potential harm to the public* – While respondent did not fire a weapon, the fact that he illegally possessed a handgun created potential for serious harm to the public.
2. *Actual or potential harm to any consumer* – This factor is not applicable.
3. *Prior disciplinary record, including level of compliance with disciplinary order(s)* – This factor is not applicable.
4. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)* – Not applicable.
5. *Number and/or variety of current violations* – Respondent has only one conviction.
6. *Nature and severity of the act(s), offense(s) or crime(s) under consideration* – Respondent's misconduct was a serious violation.
7. *Aggravating evidence* – The aggravating evidence in this case is that the victim suffered a bullet wound and was hospitalized.
8. *Mitigating evidence* – In mitigation, respondent did not fire a weapon.
9. *Rehabilitation evidence* – Respondent presented evidence of rehabilitation as set forth in Factual Finding 6.
10. *Compliance with terms of any criminal sentence, parole, or probation* – Respondent completed all of the terms and conditions of his probation.
11. *Overall criminal record* – The conviction that is the subject of these proceedings represents the entirety of respondent's criminal record.
12. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code* – Respondent's conviction has not been expunged.
13. *Time passed since the act(s) or offense(s)* – Respondent committed the offense five years ago.
14. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct* – Respondent's conduct of possessing a handgun was an intentional act.

15. *Financial benefit to the respondent from the misconduct* – Not applicable.

6. In its guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license or denial of an application. Respondent's misconduct is considered a category II offense because it presented a serious potential for harm that did not involve possession or use of dangerous drugs or controlled substances.

7. In consideration of all of the facts and circumstances of this case, the evidence or rehabilitation, and respondent's demeanor and comportment while testifying, the public would be adequately protected by issuing a probationary pharmacy technician registration to respondent with appropriate conditions.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of license, a pharmacy technician license shall be issued to respondent Ranson Lee Barrett Sparrow. Said license shall be immediately revoked; the order of revocation is stayed and respondent is placed on probation for a period of three years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board

staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4293 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4293 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4293 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 4293 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known.

Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed


appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

13. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: April 18, 2013


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 4293

13 **RANSON LEE BARRETT SPARROW**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician**
15 **Registration**

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 ("Board"), Department of Consumer
21 Affairs.

22 2. On or about May 17, 2011, the Board received an application for Registration as a
23 Pharmacy Technician from Ranson Lee Barrett Sparrow ("Respondent"). On or about May 4,
24 2011, Ranson Lee Barrett Sparrow certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 February 14, 2012.

27 ///

28 ///

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 ("Code"), unless
4 otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 of the Code states in pertinent part:

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

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

15 ...

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

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

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

28 ///

1 **REGULATORY PROVISIONS**

2 5. California Code of Regulations, title 16, section 1770, states:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

11 6. Respondent's application is subject to denial under Code section 480, subdivision
12 (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that
13 Respondent was convicted of a substantially related crime. On or about January 23, 2009,
14 Respondent pled guilty to and was convicted of one misdemeanor count of possession of a deadly
15 weapon with intent to commit assault, a violation of Penal Code section 12024. (*The People of*
16 *the State of California v. Ranson Lee Barrett Sparrow*, Super. Ct. of California, County of San
17 Bernardino, 2008, Case No. FVA801386.) The court ordered Respondent to serve 258 days in
18 jail with credit for time served of 172 days.

19 7. The circumstances of the conviction are that on or about July 31, 2008, Respondent
20 travelled to the neighborhood of John Doe in Fontana, California. Two members of a criminal
21 street gang known as the "Hustlas Gang" and a third individual with no known gang ties
22 accompanied Respondent. After drawing John Doe away from a child's birthday party,
23 Respondent produced a handgun. He displayed it, but did not fire it. Respondent and his
24 companions disappeared into an alley only to reappear fifteen minutes later in front of John Doe's
25 house. Two of Respondent's associates then fired five rounds at John Doe, one of which passed
26 through his arm and lodged in his stomach. After the shooting, Respondent fled the scene in a red
27 car with a personalized license plate. A Fontana Police Department Officer observed Respondent
28 leaving the scene and arrested him.

