

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

In the Matter of the Statement of Issues
Against:

JOEL PATRICK FLYNN

Pharmacy Technician Registration Applicant

Respondent.

Case No. 4297

OAH NO. 2013050125

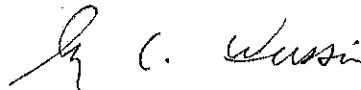
DECISION AND ORDER

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 March 10, 2014.

It is so ORDERED on February 7, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard on December 16, 2013, before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California.

Complainant, Virginia K. Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California, was represented by Elena Almanzo, Deputy Attorney General, with the Office of the Attorney General.

Joel Patrick Flynn (respondent) did not appear and was not represented.

Evidence was received, the record was closed, and the matter was submitted for decision on December 16, 2013.

FACTUAL FINDINGS

1. On August 22, 2011, respondent signed and thereafter filed with the Board an Application for Registration as a Pharmacy Technician (Application). He certified under penalty of perjury to the truthfulness of all statements, answers and representations in the Application. Respondent disclosed on his Application, that in 1997 he was convicted of driving under the influence of alcohol.

2. The Board denied the Application on December 15, 2011. Respondent timely appealed the denial.

3. On January 7, 2013, complainant signed and thereafter filed the Statement of Issues in this matter. Complainant seeks to have respondent's Application denied on the grounds

that he has been convicted of a crime substantially related to the qualifications of a Pharmacy Technician and engaged in conduct, which if had been done by a licensee, would subject him to discipline.

4. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

5. Respondent was properly served with the Notice of Hearing at his address of record. He did not appear at hearing. The matter proceeded as a default pursuant to Government Code section 11520.

Respondent's 1997 Criminal Conviction

6. On August 25, 1997, in the Superior Court, San Joaquin County, respondent was convicted on his guilty plea of driving under the influence of alcohol, a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was sentenced to 40 hours in jail, placed on three years formal probation, ordered to enroll and complete a First Offender Program, and ordered to pay approximately \$1,710 in fines and restitution. Respondent paid his fine in full and restitution was paid by his insurance company. On or about August 6, 1999, respondent's formal probation was modified to informal probation.

7. The circumstances surrounding his arrest and conviction for driving under the influence of alcohol, is that on August 19, 1997, a City of Stockton police officer arrested respondent for driving a vehicle with a blood alcohol level of .08 percent or higher. Respondent was 18 years old.

Respondent's August 18, 2009 Admission

8. Police Sergeant Timothy Swails, with the City of Stockton Police Department (Department), testified at the hearing in this matter. On August 18, 2009, Sergeant Swails was on patrol in a high-crime area of Stockton. He observed respondent riding a bike without a light. Sergeant Swails stopped respondent and asked him if he had anything illegal on him. Respondent stated "no." Officer Swails searched respondent and found a crystal-like substance. Based on Officer Swails' training and experience, he determined that the substance was methamphetamine. Respondent informed Officer Swails that he used methamphetamine a long time ago, had been clean for five years, but started using methamphetamine again on a daily basis.

Respondent's October 20, 2009 Admission

9. On October 20, 2009, respondent's vehicle was stopped for a traffic violation by two officers from the Stockton Police Department. Respondent's vehicle had no head lamps or tail lamps turned on while driving. After respondent's vehicle was stopped, one of the officers approached respondent while he was seated inside the vehicle. Respondent identified himself to the officer. Respondent informed the officer that he did not have identification, but that he had a

valid driver license. The officer asked respondent to walk to the patrol vehicle and sit in the back seat in order for the officer to identify respondent using his patrol vehicle computer. Respondent agreed. The officer checked respondent's license status and learned that respondent's license was suspended.

The officer requested a tow truck to transport respondent's vehicle. The officer asked respondent if there was anything illegal in his vehicle. Respondent replied "I don't know." The officer asked respondent why he would not know and respondent answered "I let some friends use the vehicle earlier today." The officer asked respondent if he thought his friends might have left something illegal in the vehicle. Respondent informed the officer that there may be some "dope" behind the seat. The officer then asked respondent how he knew that his friend put "dope" behind the seat. Respondent stated that his friend had told him about the dope.

10. The officer conducted an inventory of the vehicle and located a plastic baggie containing an off-white crystal like substance inside, which ultimately tested positive for methamphetamines. The net weight was 2.25 grams.

Testimony of Inspector Jeff Smith

11. Jeff Smith has been an inspector with the Board for approximately 13 years and has been a licensed pharmacist since 1981. At hearing he testified that investigates complaints and performs routine inspections of licensees. Inspector Smith reviewed the issues related to respondent's Application and is familiar with the duties of a Pharmacy Technician. He explained that a Pharmacy Technician can order medication, which includes controlled substances, pulls medication from shelves, and counts and labels medication. Inspector Smith explained that essentially, a Pharmacy Technician can do everything a Pharmacist can do, except counsel patients concerning medications.

Discussion

12. Respondent has been convicted of a crime and committed acts which are substantially related to the qualifications, functions or duties of a Pharmacy Technician. (Cal. Code of Regs., tit. 16, § 1770.) The crime and acts committed by respondent evidence present or potential unfitness by him to perform the functions of a Pharmacy Technician in a manner consistent with the public health, safety, and welfare.

The Board has adopted criteria for determining whether a licensee has been rehabilitated since committing the crimes or acts for which denial of a license is sought. (Cal. Code of Regs., tit. 16, § 1769, subdivision (a).) However, respondent failed to appear at hearing and no evidence of rehabilitation was presented. Based on the evidence, it would be contrary to the public health, safety, and welfare to issue respondent a Pharmacy Technician license at this time.

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LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), the Board may deny a license on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

[¶] ... [¶]

(3)(A) Done any act which 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 is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including the following:

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

[¶] ... [¶]

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances or dangerous drugs.

[¶] ... [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

3. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(1), and 4301, subdivision (l), by reason of the matters set forth in Factual Findings 6, 7, and 12. Respondent was convicted of a crime that is substantially related to the qualifications, functions and duties of a licensed Pharmacy Technician.

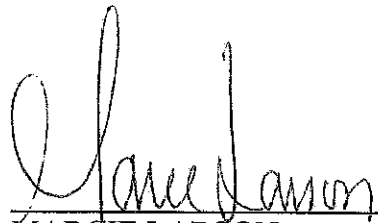
4. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivisions (a)(3), and 4301, subdivisions (h) and (j), by reason of the matters set forth in Factual Findings 8 through 10, and 12. On two occasions respondent was in unlawful possession of methamphetamines.

5. When considering the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to issue respondent a Pharmacy Technician license at this time.

ORDER

Respondent's application for a Pharmacy Technician license is DENIED.

Dated: January 10, 2014



MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 4297

13 **JOEL PATRICK FLYNN**

STATEMENT OF ISSUES

14 **Pharmacy Technician License Applicant**

15 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 August 25, 2011, the Board of Pharmacy, Department of Consumer
22 Affairs, received an application for a Pharmacy Technician License from Joel Patrick Flynn
23 (Respondent). On or about August 22, 2011, Joel Patrick Flynn 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 15, 2011.

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JURISDICTION

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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 4. Section 4300 of the Code states in pertinent part:

6 "(c) The board may refuse a license to any applicant guilty of
7 unprofessional conduct...

8 5. Section 4301 of the Code states in pertinent part:

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

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

18 "(j) The violation of any of the statutes of this state, or any other state, or
19 of the United States regulating controlled substances and dangerous drugs.

20 "(l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 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".

6. Section 480 of the Code states:

"(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

1 section means a plea or verdict of guilty or a conviction following a plea of nolo
2 contendere. Any action that a board is permitted to take following the establishment
3 of a conviction may be taken when the time for appeal has elapsed, or the judgment
4 of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under
6 the provisions of Section 1203.4 of the Penal Code.

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

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

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

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

21 "(c) A board may deny a license regulated by this code on the ground that
22 the applicant knowingly made a false statement of fact required to be revealed in the
23 application for the license."

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Conviction of a crime)

26 7. Respondent's application is subject to denial under section 480 subd. (a) (1) and 4301
27 (1) in that on or about August 27, 1987, in a criminal proceeding entitled *People v. Joel Patrick*
28 *Flynn* in San Joaquin Superior Court, Case Number ST020207, Respondent was convicted by -
plea of guilty of a violation of Vehicle Code section 23152 (driving under the influence with
.08% or higher of alcohol).

29 SECOND CAUSE FOR DENIAL OF APPLICATION

30 (Act which if done by licensee would subject him to discipline)

31 8. Respondent's application is subject to denial under section 480 subd. (a) (3) in
32 conjunction with Section 4301 subds. (h) and (j). The circumstances are as follows:

33 a. On or about August 19, 2009, respondent was stopped by Stockton police for
34 riding a bicycle without a light. The officer conducted a pat down and found suspected
35 methamphetamine, a controlled substance. The officer reported respondent's statements as

1 follows:

2 Flynn said that he used to use methamphetamine a long time ago. Flynn said he was clean
3 and sober for about 5 years, but that he started using again a couple of months ago. Flynn said he
4 had been using methamphetamine dally for the last week. He uses approximately \$20 a day.
5 Flynn said he would normally snort the methamphetamines. He does not smoke it or inject it.

6 b. On or about October 20, 2009, respondent was stopped by Stockton Police for a
7 traffic violation and was found to be driving on a suspended license. Police found
8 methamphetamine when they conducted a search of the vehicle. When asked by police if his
9 friends left something illegal in the vehicle respondent stated, "there's some dope behind the
10 seat."
11

12 PRAYER

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

- 15 1. Denying the application of Joel Patrick Flynn for a Pharmacy Technician License;
16 2. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 1/7/13

Virginia Herold
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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