

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

In the Matter of the Statement of Issues
Against:

SIMON GEBREMICHAEL

Respondent.

Case No. 4354

OAH No. 2013050019

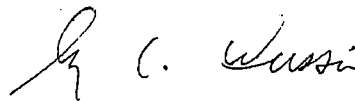
DECISION AND ORDER

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 18, 2014.

It is so ORDERED on January 17, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against :

SIMON GEBREMICHAEL
Aka SIMON BERHE GEBREMICHAEL

Respondent.

Case No. 4354

OAH No. 2013050019

PROPOSED DECISION

This matter was heard on December 3, 2013, before Ann Elizabeth Sarli, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), in Sacramento, California.

Complainant, Virginia Herold, Executive Officer of the California Board of Pharmacy (Board), was represented by Brian S. Turner, Deputy Attorney General.

Simon Gebremichael, respondent, represented himself.

Oral and documentary evidence was submitted. The record was closed and the matter submitted for decision on December 3, 2013.

FACTUAL FINDINGS

1. On May 26, 2011, the Board received from respondent an application for Registration as a Pharmacy Technician.

2. On April 4, 2013, complainant, in her official capacity, made the Statement of Issues and caused it to be filed thereafter. Respondent timely filed a Notice of Defense. 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.

Criminal Convictions

3. On December 15, 2006, when he was 18 years old, respondent went to the Wells Fargo Bank on Shaw Avenue in Fresno. He opened a checking and savings account, using the name of Derrick Mcelveen and using a California driver's license with the same name. He signed Mcelveen's name to the Wells Fargo consumer account application. He deposited a check in the amount of \$ 4,950, written to Derrick Mcelveen from First Liberty Bank and Trust in Hazleton, Pennsylvania. The business name on the check was T. G. W. Corp. in Avoca, Pennsylvania. Respondent told the bank clerk that he wished to withdraw the total amount of the check. He was told he could only draw \$100 until the check had cleared. He accepted the \$100. Respondent called the bank on December 18, 2006 and December 19, 2006 to inquire whether the check cleared. On December 20, 2006, bank employees contacted First Liberty Bank and Trust and ascertained that the check was fraudulent. The business name on the account did not match the business account number.

4. On December 20, 2006, respondent arrived at the bank to withdraw the remaining money from the account. He completed a Wells Fargo withdrawal slip for \$4,750 and signed the name Derrick Mcelveen to the withdrawal slip. The Fresno Police Department was notified and arrived at the bank. They interviewed respondent, who at first denied that he opened the account and then admitted he had. He told the officers that he had found the check and was not sure where he had found it. He said he had opened the account without using any identification and admitted that he did not know Derrick Mcelveen and did not have Derrick Mcelveen's permission to sign his name. He claimed that he did not know the check was fraudulent.

5. Respondent was charged with burglary and on January 22, 2007, in the Superior Court, County of Fresno ¹ he was convicted on his plea of nolo contendere of one count of violation of Penal Code section 459/460 (b) (second degree burglary), a misdemeanor. He was placed on a three-year conditional sentence of probation and was required to serve 90 days in Fresno County Jail, which was converted to Adult Offender Work Program. He was sentenced to pay fines, fees and restitution.

6. Less than a year later, on December 1, 2007, respondent was arrested outside a 76 Gas Station at N. Cedar Ave. in Fresno. At about 10:49 p.m., the clerk was closing up the gas station and had locked the door and placed a chain on it. He saw respondent approach the business from the east. Respondent was wearing a black hat, black shirt and a red bandanna covering his face. The bandanna was pulled up just below his eyes and he wore sunglasses. Respondent was carrying a handgun in his left hand and he was attempting to open the front door of the business with his right hand. He was unable to open the door. The clerk pressed the silent alarm which summoned the police. Respondent ran from the scene, jumping over two walls, but was apprehended. The weapon he was carrying was a silver BB gun which resembled a semiautomatic handgun.

¹ Case number F06909961.

7. On February 11, 2008, respondent was convicted in the Fresno County Superior Court² of a violation of Penal Code section 664/459/460(b) (attempted first degree burglary), a felony. He was sentenced to serve 180 days in jail and to pay fines and fees. He was placed on probation for two years.

Respondent's Application for Licensure

8. On March 15, 2011 respondent signed his application for Registration as a Pharmacy Technician. Question 6 of the application asks:

Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of \$500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.** (Bolding in original)

9. Question 6 was followed by two boxes: a "Yes" box and a "No" box. Respondent checked the box marked "No", representing that he had not been convicted of any violations of law.

10. Respondent signed the "Applicant Affidavit" which stated in pertinent part: "I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of all statements, answers and representations made in this application, including all supplementary statements. I also certify that I have read and understand the instructions attached to this application."

11. Respondent's answer to Question 6 was false, in that he had been convicted of the two crimes set forth in Findings 3 through 7.

Respondent's Defenses and Rehabilitation Evidence

12. Respondent was not forthcoming about his convictions. When asked about them on cross examination, he downplayed the offenses. He acknowledged that he attempted to cash a fraudulent check, but denied he used the identification of another person, stating he opened the account on a false name alone. He admitted that he went to a convenience store with a BB gun. Yet, he denied that he was attempting to rob the store, stating: "I never admitted it" and "that [robbery] was not my intention." He explained that he had a handkerchief around his neck, but it was not covering his face.

² Case number F07909167.

13. Respondent stressed that he was “very young and reckless” when he committed his offenses. He testified that he has turned his life around, has had no issues with the law and has not harmed anyone. He graduated from high school in 2005, and since his convictions he has worked at Fresno City College as an aide and has started his own cell phone business. He enrolled in the pharmacy technician training program at UEI College in Fresno in November 8, 2010, and successfully completed the program on March 18, 2011.

14. Respondent testified that a counselor at his pharmacy technician program told him that he did not need to disclose his convictions because he was in the process of obtaining expungements. He testified that he did not understand that the question required disclosure of expunged convictions as well. Respondent was not credible. He offered no evidence in support of his claim that his counselor misled him, and no evidence that he was in the process of obtaining an expungement. Moreover, Question 6 very clearly requires disclosure of all convictions. It is clear that respondent did not disclose his convictions because he did not want the Board to know about them. Even if his counselor had misled him, a pharmacy technician must be very attentive to and careful with reading documents and instructions. Respondent has demonstrated that he lacked these skills when completing his application.

Discussion of Rehabilitation Evidence and Determination of Discipline

15. Respondent’s rehabilitation evidence was slight. He submitted no letters of reference from persons who know him well, no job performance reviews or letters from employers and no information from his probation officer. He has not had his criminal convictions expunged. He did not take full responsibility for his crimes. The mere passage of time without further incident is not sufficient to shown rehabilitation. Most importantly though, respondent, very recently showed dishonesty on his application to the Board and thwarted any chance he had of showing rehabilitation.

LEGAL CONCLUSIONS

Governing Statutes

1. Business and Professions Code (B&P) section 475 provides in pertinent part:
 - (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
 - (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

[¶...¶]

2. B&P 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

[¶...¶]

3. B&P 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.

(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.

Grounds for Denial of Application- Criminal Convictions

4. Respondent's application is subject to denial under B&P sections 480, subdivision (a)(1), 480, subdivision (a)(3)(A) and 4301, subdivision (l). As set forth in Findings 3 through 5, respondent was convicted of second degree burglary.

5. Respondent's application is subject to denial under B&P sections 480, subdivision (a)(1), 480, subdivision (a)(3)(A) and 4301, subdivision (l). As set forth in Findings 6 and 7, respondent was convicted of attempted first degree burglary.

6. Burglary is substantially related to the qualifications, functions and duties of a pharmacy technician, in that it is a crime of dishonesty and theft. Respondent's crimes also involved the attempted theft of a large sum of money and the threat of violence. A pharmacy technician is required to maintain honesty and integrity when working with physicians and vulnerable patients and when working with dangerous drugs and controlled substances.

Grounds for Denial of Application- Making False Statement

7. Respondent's application is subject to denial under B&P sections 475, subdivision (a)(1), 480, subdivision (a)(3)(A) and section 4301, subdivision (g). As set forth in Findings 3 through 11, respondent knowingly made and signed an application for licensure which falsely represented that he did not have any criminal convictions. Respondent knowingly omitted to state a material fact in his application for licensure.

Grounds for Denial of Application- Act Involving Moral Turpitude

8. Respondent's application is subject to denial under B&P sections 480, subdivision (a)(2), 480, subdivision (a)(3)(A) and 4301, subdivision (f). As set forth in Findings 3 through 7, respondent committed acts involving moral turpitude, dishonesty, fraud and deceit in the commission of his crimes.

9. Respondent's application is subject to denial under B&P sections 480, subdivision (a)(2), 480, subdivision (a)(3)(A) and 4301, subdivision (f). As set forth in Findings 8 through 11, respondent committed acts involving moral turpitude, dishonesty, fraud and deceit in failing to reveal his criminal convictions on his application for licensure.


Rehabilitation

10. The gravity of respondent's violations were considered and weighed against his youth and the passage of five years without further incident. However, respondent's recent act of dishonesty on his application for licensure demonstrates that he has not rehabilitated himself and is currently not fit for licensure.

ORDER

The application of Simon Gebremichael for registration as a Pharmacy Technician is DENIED.

Dated: December 10, 2013


ANN ELIZABETH SARLI
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 Against:

Case No. 4354

12 **SIMON GEBREMICHAEL**
13 aka SIMON BERHE GEBREMICAEL
4671 N. Glenn #12
14 Fresno, California 93727

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about May 26, 2011, the Board received an application for Registration as a
23 Pharmacy Technician from Simon Gebremichael also known as Simon Berhe Gebremicael
24 (Respondent). On or about March 15, 2011, Respondent 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 March 8, 2012.

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28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board and Department under the authority of the
3 following laws. All sections references are to the Business and Professions Code unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 475 states, in pertinent part:

7 (a) Notwithstanding any other provisions of this code, the provisions of
8 this division shall govern the denial of licenses on the grounds of:

9 (1) Knowingly making a false statement of material fact, or knowingly
omitting the state of a material fact, in an application for a license.

10 5. Section 480 states, in pertinent part:

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

13 (1) Been convicted of a crime. A conviction within the meaning of this
14 section means a plea or verdict of guilty or a conviction following a plea of nolo
15 contendere. Any action that a board is permitted to take following the establishment
16 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.

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

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

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

22 (b) Notwithstanding any other provision of this code, no person shall be
23 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
24 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
25 person when considering the denial of a license under subdivision (a) of Section 482.

26 6. Section 4301 states in relevant part, that:

27 The board shall take action against any holder of a license who is guilty
28 of unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is

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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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 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 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.

FIRST CAUSE FOR DENIAL

(Conviction of Crime)

7. Respondent's application is subject to denial under Code sections 480(a)(1), 480(a)(3)(A) and 4301(l), on the grounds Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician, as follows:

8. On or about February 11, 2008, in a criminal proceeding in the Superior Court of California, County of Fresno Central Division, Case Number F07909167, Respondent was convicted by his plea of nolo contendere to one count of violating Penal Code Sections 664/459/460(b), a felony. The circumstances of the crime are that on or about December 1, 2007, Respondent attempted to unlawfully enter a 76 gas station while armed with a semi-automatic handgun.

9. On or about January 22, 2007, in a criminal proceeding in the Superior Court of California, County of Fresno Central Division, Case Number F06909961, Respondent was

1 convicted by his plea of nolo contendere of one count of violation of Penal Code Section 459/
2 460(b) (2nd degree burglary), a misdemeanor. The circumstances of the crime are that on or
3 about and between December 15 and December 20, 2006, Respondent forged the name of Derrick
4 McElveen on a fraudulent check written for the amount of \$4,950.0, on a Wells Fargo checking
5 account application. Respondent attempted to withdraw the full amount but was only permitted
6 to withdraw one hundred dollars until the fraudulent check cleared. Respondent was arrested
7 while attempting to withdrawal money from the account.

8 **SECOND CAUSE FOR DENIAL**

9 **(Making False Statements)**

10 10. Respondent's application is subject to denial under Code section 475(a) (1), and
11 Section 480(a)(3)(A) Section 4301(g) because Respondent failed to disclose two criminal
12 convictions in his application. The application for Pharmacy Technician license has a specific
13 question about past criminal convictions. On or about March 15, 2011, Respondent signed his
14 application under penalty of perjury and denied he had been convicted of crime. The true facts
15 are Respondent had two prior convictions, as set forth in paragraphs 8 and 9.

16 **THIRD CAUSE FOR DENIAL**

17 **(Act Involving Moral Turpitude)**

18 11. Paragraphs 8 through 10 are incorporated herein as though set forth at length.
19 Respondent's application is subject to denial under Code sections 480(a)(2), 480 (a)(3)(A) and
20 4301(f) because Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit,
21 or corruption, as set forth in paragraphs 8, 9, and 10.

22 **PRAYER**

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

25 1. Denying the application of Simon Gebremichael, also known as Simon Berhe
26 Gebremicael, for an Pharmacy Technician Registration and,

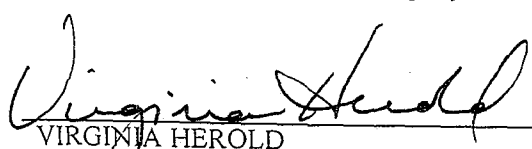
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2. Taking such other and further action as deemed necessary and proper.

DATED: 4/4/13



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

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