

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

In the Matter of the Accusation Against:

PETER RANDOLPH LASELL

Pharmacist License No. RPH 32116,

Respondent.

Case No. 4652

OAH No. 2013120745

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on May 22, 2014, in Oakland, California.

Deputy Attorney General Gregory Tuss represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy.

Gregory P. Matzen, Pharm.M.S., J.D., represented respondent Peter Randolph Lasell, who was present throughout the administrative hearing.

The record was left open for receipt of closing briefs. Complainant's closing and rebuttal briefs, and respondent's closing brief were timely received, marked for identification and considered.

The matter was deemed submitted for decision on June 30, 2014.

FACTUAL FINDINGS

1. Complainant, Virginia K. Herold, made the amended accusation in her official capacity as Executive Officer of the Board of Pharmacy (board).

2. On August 3, 1978, the board issued Pharmacist License No. RPH 32116 to Peter Randolph Lasell (respondent). The license is inactive and expired on April 30, 2012.

3. On May 5, 2008, in the United States District Court for the Northern District of California, respondent was convicted of violating title 18, United States Code, section 2252, subdivision (a)(4)(B) (knowing possession of child pornography), a felony. On May 19, 2008, respondent was sentenced to 48 months in federal prison, followed by supervised release for a period of five years, under certain conditions, including the payment of a fine in the amount of \$10,000. Respondent was ordered to surrender on February 12, 2009.

4. Respondent has served his prison sentence and paid the fine. He is currently on supervised release, which is scheduled to terminate in 2017. In addition to the standard terms of supervised release, respondent was ordered, among other conditions: 1) to participate in a sex offense-specific treatment evaluation to determine if treatment is necessary and appropriate; 2) to participate in a mental health treatment program, as directed by the probation officer; 3) to apply to register as a sex offender in this state; and, 4) not to have any contact with children under the age of 14 without prior approval of the probation officer. Respondent's sex offender registration obligates him to notify the police if he is going to be on a school campus.

5. Ijeoma Eleazu, an inspector with the board, testified credibly at hearing. Eleazu has reviewed the indictment, judgment and docket pertaining to respondent's criminal conviction. In Eleazu's opinion, the conduct underlying respondent's conviction evidences the unfitness or potential unfitness for practice as a pharmacist, and is substantially related to the qualifications, functions and duties of a licensed pharmacist because it demonstrates a lack of sound judgment and an unwillingness to follow the law.

6. A pharmacist's job duties include accurately interpreting and filling medication orders, and counseling patients on medication administration. Pharmacists have access to a broad range of dangerous drugs and controlled substances. Pharmacists are constantly called upon to make judgment calls. They have access to the sensitive personal information of patients, work around other individuals, including children, and are responsible for the overall running of the pharmacy. Pharmacists must demonstrate sound judgment, trustworthiness and good character, and must be willing to follow the law.

7. The board has incurred \$5,977.50 in enforcement costs. Complainant's counsel estimated that he would spend an additional one and one-half hours preparing for the hearing, bringing the total costs reimbursement request to \$6,232.50. There was no challenge to the reasonableness of the costs.

Respondent's Evidence

8. Respondent does not dispute that he was convicted of possession of child pornography.

9. Respondent has not practiced as a pharmacist since 2006. In March 2013, respondent sought to retire his license, having determined that he would not return to the practice of pharmacy. The board rejected his request to retire his license on June 7, 2013.

On August 14, 2013, the board filed its accusation against respondent. Respondent has no current plans to return to work as a pharmacist.

10. Respondent states that his possession of child pornography did not occur when he was working as a pharmacist, did not occur at a pharmacy, did not involve any patients, and he did not hold himself out as a pharmacist during the commission of the crime.

11. Respondent acknowledges that possessing child pornography can harm children, families and society. Respondent also acknowledges that the possession of child pornography can endanger the public and that he exercised poor judgment in committing the offense.

LEGAL CONCLUSIONS

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.)

Causes for Discipline

2. Business and Professions Code section 4301, subdivision (f), authorizes the suspension or revocation of a license for unprofessional conduct, which includes the commission of any act involving moral turpitude, whether the act is committed in the course of relations as a licensee or otherwise.

The possession of child pornography is an offense of moral turpitude. (*In re Grant* (2014) 58 Cal.4th 469.) In *Grant*, the Supreme Court held that criminal conduct, although not committed in the practice of law or against a client, reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law, such as trustworthiness, honesty, fairness, candor and fidelity to fiduciary duties, or if it involves such a flagrant breach of a duty owed to another or to society, or such a flagrant disrespect of the law or societal norms that knowledge of the attorney's conduct would be likely to undermine public confidence in, and respect for the legal profession. The court concluded that conviction of the offense of possession of child pornography is an offense of moral turpitude requiring summary disbarment in every case.

Similarly, pharmacists are required to demonstrate sound judgment, trustworthiness and good character, and must be willing to follow the law. (Factual Finding 6.) For this reason, the Legislature saw fit to provide the board with the authority to impose discipline on a licensee who has committed an act of moral turpitude. Respondent was convicted of a crime of moral turpitude. (Factual Findings 3 and 4.) Cause therefore exists to impose discipline on respondent's license pursuant to Business and Professions Code, section 4301, subdivision (f).

3. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 4301, subdivision (l), authorizes the suspension or revocation of a pharmacist's license upon the conviction of a crime that is substantially related to the qualifications, functions and duties of a pharmacist.

California Code of Regulations, title 16, section 1770, provides that a crime shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant, if to a substantial degree it evidences the present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety or welfare.

The crime of possession of child pornography demonstrates a lack of sound judgment and a character flaw that is inconsistent with the duties of a pharmacist, and evidences the present or potential unfitness to perform a pharmacist's duties. It is not necessary that the offense occur while the licensee is practicing his or her profession. Moreover, a pharmacist has access to dangerous drugs, controlled substances and sensitive personal information, is around other individuals, including children, and is responsible for the overall working of the pharmacy. (Factual Finding 6.) Respondent is required to register as a sex offender, must notify police if he is going to be on school grounds, and is not allowed to have contact with children age 14 or younger without his probation officer's permission. (Factual Finding 3.) These restrictions are inconsistent with the qualifications, functions and duties of a pharmacist.

By reason of the matters set forth in Factual Findings 3 through 6, respondent's conviction constitutes cause for discipline pursuant to Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l).

Disciplinary Considerations

4. Cause for discipline having been established, the issue is the level of discipline to impose. The board is a consumer protection agency with the primary mission of protecting the health, safety, and welfare of the public with integrity and honesty. The board's criteria of rehabilitation (Cal. Code Regs., tit. 16, § 2522) and its disciplinary guidelines (Cal. Code Regs., tit. 16, § 2524) have been considered in determining the appropriate discipline in this matter. The relevant criteria of rehabilitation are: the nature and severity of the act; overall disciplinary record; number and variety of violations; mitigation evidence; time passed since the act occurred; cooperation with the court; and other evidence of rehabilitation.

In this matter, the nature and severity of the act is significant. Moreover, respondent remains on supervised release, is required to register as a sex offender, and provided no evidence of mitigation or rehabilitation. Under these circumstances, revocation of his

pharmacist license is warranted.

Costs of Enforcement

5. Complainant has requested that respondent be ordered to pay the board the costs of investigating and enforcing this case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement have been found to be \$6,232.50. (Factual Finding 7.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether the costs reimbursement should be ordered.

Those factors include whether the licensee has been successful at hearing in obtaining a dismissal or reduction of the charges, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent did not establish any of the factors warranting a reduction in the costs.

However, the board rejected respondent's request to retire his license before the costs were accrued. Under these circumstances, the costs reimbursement will be deferred until such time as respondent applies to reinstate his license.

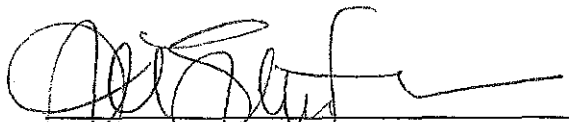
ORDER

1. Pharmacist License No. RPH 32116, issued to respondent Peter Randolph Lasell is revoked. Respondent shall relinquish his wall license and pocket renewal to the board within 10 days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of his revoked license for three years from the effective date of this decision.

2. As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$6,232.50. Said amount shall be paid in full prior to the reapplication for reinstatement of his license unless otherwise ordered by the board.

DATED:

7/3/14



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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Supervising Deputy Attorney General
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case Number 4652

12 **PETER RANDOLPH LASELL**
a.k.a. Peter Lasell
13 4013 Marsten Avenue
Belmont, California 94002

AMENDED
ACCUSATION

14 **Pharmacist License Number RPH 32116,**

15
16 Respondent.

17
18 Complainant Virginia Herold alleges:

19 **PARTIES**

20 1. Complainant brings this amended accusation solely in her official capacity as the
21 Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

22 2. On or about August 3, 1978, the Board issued Pharmacist License Number RPH
23 32116 to respondent Peter Randolph Lasell, a.k.a. Peter Lasell. The pharmacist license expired
24 on April 30, 2012, and has not been renewed.

25 **JURISDICTION**

26 3. This amended accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 4. Section 4300 states, in pertinent part:

2 “(a) Every license issued may be suspended or revoked.

3 “(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 “(1) Suspending judgment.

7 “(2) Placing him or her upon probation.

8 “(3) Suspending his or her right to practice for a period not exceeding one year.

9 “(4) Revoking his or her license.

10 “(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.”

12 5. Section 4300.1 states:

13 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
14 operation of law or by order or decision of the board or a court of law, the placement of a license
15 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
16 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
17 proceeding against, the licensee or to render a decision suspending or revoking the license.”

18 **STATUTORY AND REGULATORY AUTHORITY**

19 6. Section 490, subdivision (a), states:

20 “In addition to any other action that a board is permitted to take against a licensee, a board
21 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
22 the crime is substantially related to the qualifications, functions, or duties of the business or
23 profession for which the license was issued.”

24 7. Section 4301 states, in pertinent part:

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

28 ...

1 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
3 whether the act is a felony or misdemeanor or not.

4 ...
5 “(l) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.”

22 8. California Code of Regulations, title 16, section 1770, states:

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

1 **COST RECOVERY**

2 9. Section 125.3, subdivision (a), states:

3 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
4 proceeding before any board within the department or before the Osteopathic Medical Board,
5 upon request of the entity bringing the proceedings, the administrative law judge may direct a
6 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
7 to exceed the reasonable costs of the investigation and enforcement of the case."

8 **FACTUAL BACKGROUND**

9 10. On or about August 19, 2008, in *United States v. Peter Lasel*, United States District
10 Court, Northern District of California Case Number CR-07-0716-0000 MPH, respondent pled
11 guilty to a felony violation of 18 U.S.C. § 2252(a)(4)(B) (possession of child pornography). He
12 was sentenced to 48 months' imprisonment, 5 years' supervised release after completing his
13 prison term, and assessed a \$10,000.00 fine.

14 **CAUSES FOR DISCIPLINE**

15 **FIRST CAUSE FOR DISCIPLINE**
16 **Bus. & Prof. Code, § 490, subd. (a)**
Conviction

17 11. The allegations of paragraph 10 are realleged and incorporated by reference as if fully
18 set forth.

19 12. Respondent has subjected his pharmacist license to disciplinary action under section
20 490, subdivision (a), for being convicted of a crime substantially related to the qualifications,
21 functions, or duties of a pharmacist. As set forth in paragraph 10 above, on or about August 19,
22 2008, respondent pled guilty to a felony violation of 18 U.S.C. § 2252(a)(4)(B).

23 **SECOND CAUSE FOR DISCIPLINE**
24 **Bus. & Prof. Code, § 4301, subd. (f)**
Unprofessional Conduct – Act Involving Moral Turpitude

25 13. The allegations of paragraph 10 are realleged and incorporated by reference as if fully
26 set forth.

27 14. Respondent has subjected his pharmacist license to disciplinary action under section
28 4301, subdivision (f), for the unprofessional conduct of committing an act or moral turpitude. As

1 set forth in paragraph 10 above, on or about August 19, 2008, respondent pled guilty to a felony
2 violation of 18 U.S.C. § 2252(a)(4)(B).

3 **THIRD CAUSE FOR DISCIPLINE**
4 **Bus. & Prof. Code, § 4301, subd. (l)**
5 **Unprofessional Conduct – Conviction**

6 15. The allegations of paragraph 10 are realleged and incorporated by reference as if fully
7 set forth.

8 16. Respondent has subjected his pharmacist license to disciplinary action under section
9 4301, subdivision (l), for the unprofessional conduct of being convicted of a crime substantially
10 related to the qualifications, functions, or duties of a pharmacist. As set forth in paragraph 10
11 above, on or about August 19, 2008, respondent pled guilty to a felony violation of 18 U.S.C.

12 § 2252(a)(4)(B).

13 **PRAYER**

14 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
15 accusation, and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacist License Number RPH 32116 issued to Peter
17 Randolph Lasell;

18 2. Ordering Peter Randolph Lasell to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 11/4/13

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

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7 *Attorneys for Complainant*

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A C C U S A T I O N

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11 **FIRST CAUSE FOR DISCIPLINE**
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20 **SECOND CAUSE FOR DISCIPLINE**
21 **Bus. & Prof. Code, § 4301, subd. (l)**
22 **Unprofessional Conduct – Conviction**

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///

PRAYER

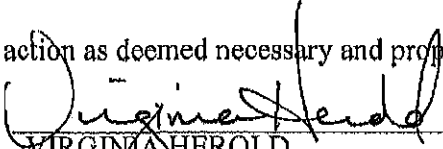
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1. Revoking or suspending Pharmacist License Number RPH 32116 issued to Peter Randolph Lasell;

2. Ordering Peter Randolph Lasell to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 8/14/13


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

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