

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

In the Matter of the Statement of Issues Against:

Case No. 4487

MINA SAFWAT HANNA

OAH NO. 2013041102

Pharmacy Technician Registration Applicant

Respondent.

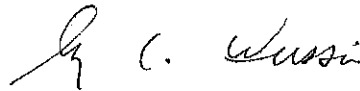
DECISION AND ORDER

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 by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on December 23, 2013.

Katherine Messana, Deputy Attorney General, represented Virginia Herold (Complainant).

Mina Safwat Hanna (Respondent) represented himself.

The Statement of Issues was amended at the hearing as follows. On page 5, paragraph 11, line 4, the word "misdemeanor," was struck and was replaced by the word "felony."

Complainant seeks to deny Respondent's Pharmacy Technician Application (Application) based on allegations that Respondent suffered three convictions and on the conduct underlying the convictions. Respondent disputed some of the allegations and presented evidence in support of licensure.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs (Board).

2. Respondent filed the Application on March 22, 2012. The Application was denied on August 31, 2012. Respondent appealed the denial on October 10, 2012, and the Statement of Issues was filed on April 4, 2013.

3. a. On July 5, 2006, in the Superior Court, County of San Bernardino, in case number TWV051375, Respondent was convicted, on his plea of guilty, of violating Vehicle Code section 23222, subdivision (b) (possession of less than one ounce of Marijuana while driving), a misdemeanor. The Court imposed a \$75 fine, which fine was suspended on condition that Respondent pay a \$110 victim restitution fee by September 1, 2006.

b. The facts and circumstances underlying the conviction are that on February 28, 2006, Respondent was inside his parked vehicle when a police officer made contact with him. A smell of Marijuana emanated from the vehicle when its door was opened, and a baggie of Marijuana was found in one of Respondent's pants' pockets.

4. a. On March 27, 2008, in the Superior Court, County of San Bernardino, Rancho District, in case number MWV707492, Respondent was convicted, on his plea of no contest, of violating Penal Code section 490.5, subdivision (a) (petty theft of retail merchandise), a misdemeanor. The Court suspended imposition of sentence and placed Respondent on probation for two years on terms and conditions that included service of two days in jail, with credit for two days, payment of \$590 in fines and fees, and staying away from Macy's stores. Respondent was allowed to file a petition to terminate probation within one year absent any further arrests or convictions.

b. In this case, Respondent entered a Macy's retail store on October 4, 2007, took a sweater into a fitting room, removed the sweater's security sensor, placed it in a bag from another retail store, and walked out of Macy's without paying for the sweater.

5. a. On March 16, 2010, in the Superior Court, County of San Bernardino, in case number FWV902960, Respondent was convicted, on his plea of no contest, of violating Health and Safety Code section 11366 (maintaining a place for selling or using controlled substances), a felony. The Court suspended imposition of sentence and placed Respondent on formal probation for three years on terms and conditions that included service of 120 days in jail, with credit for one day, completion of a rehabilitation program, completion of substance abuse counseling, abstaining from use and possession of controlled substances, subjecting himself to random bodily fluid testing, payment of \$370 in fines and fees, and payment of \$40 per month for costs associated with probation monitoring plus \$10 each time a random drug test was ordered.

b. The facts and circumstances underlying the conviction are that on July 1, 2009, Respondent assisted in a drug sale to what turned out to be an undercover police officer. Respondent obtained approximately 4 grams of Marijuana from his cousin, Patrick, and gave it

to another man, Scott, for sale to a third party. Respondent followed Scott to obtain the proceeds of the sale, \$1,300. Scott was arrested after he sold the drug to the undercover officer. The officers had noticed Respondent watching the transaction and approached him. Respondent led the officers to Patrick's house where additional Marijuana and drug paraphernalia was recovered.

6. Respondent's convictions are for crimes substantially related to the duties, functions, and qualifications of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770. The conduct underlying the convictions set forth in factual finding numbers 3 and 5 involves the use or sale of controlled substances and the conduct underlying the conviction set forth in factual finding number 4 involves dishonesty. In each of these cases, Respondent demonstrated poor judgment and his conduct evidences present or potential unfitness to discharge the duties of a pharmacy technician.

7. Respondent complied with the terms and conditions of probation in each of his convictions. On December 7, 2007, the court granted Respondent's motion pursuant to Penal Code section 1203.4, setting aside his plea and dismissing the criminal complaint in case TWV051375. On November 21, 2011, the court granted Respondent's motion pursuant to Penal Code section 1203.4 in case FWV902960. However, at the hearing, Respondent minimized his involvement in the events that led to the three convictions, often contradicting contemporaneous statements of policemen, and failed to take full responsibility for his actions.

8. Respondent attributed his convictions to youthful indiscretions and to falling in with the wrong crowd. He is now 27 years old, and has dedicated himself to work and school since his last conviction. He has been working two jobs, one at a restaurant and one as a care giver to seniors. Respondent received a Bachelor Degree in Business from California State University, Fullerton (CSUF), in May 2008, he obtained a pharmacy technician certification in August 2009, and returned to Chaffey College (Chaffey) from June 2009 to May 2012 to complete prerequisite coursework for studying osteopathic medicine. He has received awards for academic excellence from CSUF and Chaffey. He expects to enter the Lincoln Memorial University-DeBusk College of Osteopathic Medicine in the Fall of 2014.

9. Respondent has distanced himself from those with whom he was involved when he was arrested and convicted. He has performed volunteer services for the City of Rancho Cucamonga Senior Center (Senior Center). Respondent submitted two letters from individuals who attest to his good character, one from a person involved in the Senior Center, Donna Castrejon, Community Service Specialist for the City of Rancho Cucamonga, and one from a pharmacist where Respondent has worked, Ragy S. Gergis.

LEGAL CONCLUSIONS

1. Grounds exist to deny Respondent's Application pursuant to Business and Professions Code section 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1770, in that he suffered three convictions substantially related to the qualifications, functions and duties of a pharmacy technician, by reason of factual finding numbers 3 through 6.

2. Grounds exist to deny Respondent's Application pursuant to Business and Professions Code section 480, subdivision (a)(2), in that he engaged in dishonesty, by reason of factual finding number 4.

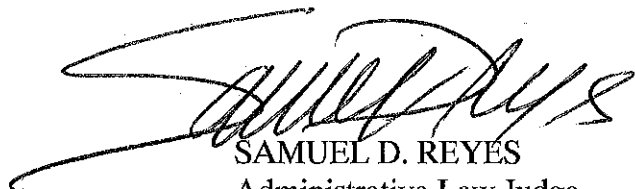
3. Grounds exist to deny Respondent's Application pursuant to Business and Professions Code sections 480, subdivision (a)(3), 490, 4301, subdivisions (j), (l), and (o), and California Code of Regulations, title 16, section 1770, in that he engaged in conduct that would be grounds to discipline a licensee, by reason of factual finding numbers 3 through 6 and legal conclusion numbers 1 and 2.

4. All evidence submitted in support and against licensure has been considered. On the one hand, Respondent has taken steps to rehabilitate himself, namely, obtaining relief pursuant to Penal Code section 1203.4, changing his associations, and focusing on public service, work and school. On the other hand, Respondent has suffered multiple convictions, including serious and relatively recent ones involving a theft that appeared to involve some premeditation and the sale of Marijuana. He minimized his involvement in the events that led to the three convictions and failed to take full responsibility for his actions. Respondent has failed to demonstrate sufficient rehabilitation to warrant licensure at this time. Accordingly, the order that follows is necessary for the protection of the public.

ORDER

The Application of Respondent Mina Safwat Hanna for registration as a pharmacy technician is denied.

DATED: 4/6/04


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Statement of Issues
11 Against:
12 **MINA SAFWAT HANNA**
13 Pharmacy Technician Registration Applicant
14 Respondent.

Case No. 4487

STATEMENT OF ISSUES

15
16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about March 27, 2012, the Board of Pharmacy, Department of Consumer
21 Affairs received a Pharmacy Technician Application from Mina Safwat Hanna ("Respondent").
22 On or about March 22, 2012, Mina Safwat Hanna certified under penalty of perjury to the
23 truthfulness of all statements, answers, and representations in the application. The Board denied
24 the application on August 31, 2012.

25 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 4. Section 480 of the Code states:

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

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

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

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

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

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

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

28 5. Section 490 of the Code states, in pertinent part:

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

(b) Notwithstanding any other provision of law, a board may exercise any
authority to discipline a licensee for conviction of a crime that is independent of the
authority granted under subdivision (a) only if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the
licensee's license was issued.

(c) 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

1 Section 1203.4 of the Penal Code.”

2 6. Section 4301 of the Code states:

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

7 ...
8 (j) The violation of any of the statutes of this state, or any other state, or
9 of the United States regulating controlled substances and dangerous drugs.

10 ...
11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of a
13 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
16 evidence of unprofessional conduct. In all other cases, the record of conviction shall
17 be conclusive evidence only of the fact that the conviction occurred. The board may
18 inquire into the circumstances surrounding the commission of the crime, in order to
19 fix the degree of discipline or, in the case of a conviction not involving controlled
20 substances or dangerous drugs, to determine if the conviction is of an offense
21 substantially related to the qualifications, functions, and duties of a licensee under this
22 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere is deemed to be a conviction within the meaning of this provision. The
24 board may take action when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under
27 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
28 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

...
(o) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.”

REGULATORY PROVISION

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

“For the purpose of denial, suspension, or revocation of a personal or
facility license pursuant to Division 1.5 (commencing with Section 475) of the
Business and Professions Code, a crime or act shall be considered substantially
related to the qualifications, functions or duties of a licensee or registrant if to a
substantial degree it evidences 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.”

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Substantially Related Crimes)**

3 8. Respondent's application is subject to denial under section 480, subdivision (a)(1) of
4 the Code in conjunction with California Code of Regulations, title 16, section 1770 in that
5 Respondent was convicted of crimes substantially related to the qualifications, functions and
6 duties of a pharmacy technician, as follows:

7 9. On or about July 5, 2006, Respondent pled guilty to one misdemeanor count of
8 violating Vehicle Code section 23222(b) [possess less than one ounce marijuana while driving] in
9 the criminal proceeding entitled *The People of the State of California v. Mina Safwat Hanna*
10 (Super. Ct. of California, County of San Bernardino, 2006, Case No. TWV051375). The court
11 ordered Respondent to pay a fine in the amount of \$75.00. The circumstances underlying the
12 criminal conviction are that on or about April 28, 2006, County of San Bernardino Sheriff's
13 Department Officers ("Officers") responded to a report of a suspicious vehicle. The subject
14 sitting in the driver's seat was identified as Respondent. Upon opening the door of the vehicle,
15 officers observed a large plume of smoke with the odor of marijuana emanate from the vehicle.
16 Respondent admitted to smoking marijuana. Officers found a substance consistent with
17 marijuana in Respondent's pocket and in the rear passenger door. Officers also found numerous
18 pipes which are used to smoke marijuana.

19 10. On or about March 27, 2008, Respondent pled nolo contendere to one misdemeanor
20 count of violating Penal Code section 490.5(a) [petty theft; retail merchandise] in the criminal
21 proceeding entitled *The People of the State of California v. Mina Safwat Hanna* (Super. Ct. of
22 California, County of San Bernardino, 2008, Case No. MWV707492). The court ordered
23 Respondent to serve 2 days in a San Bernardino County Jail Facility and placed Respondent on
24 probation for 24 months, with terms and conditions. The circumstances underlying the criminal
25 conviction are that on or about October 4, 2007, a San Bernardino County Sheriff's Department
26 Officer ("Officer") Responded to a Macy's store in reference to a possible theft in progress. The
27 Officer contacted Respondent. Respondent told the Officer that he entered the Macy's store with
28 two friends, separated from them, selected a sweater, went into the fitting room, tore off the

1 security sensor and put the sweater inside an Express bag he had with him. Respondent also told
2 the Officer that he exited the fitting room, found his friends and walked out of the store through
3 the west doors passing open cash registers.

4 11. On or about March 16, 2010, Respondent pled no contest to one misdemeanor count
5 of violating Health and Safety Code section 11366 [keep place to sell controlled substance] in the
6 criminal proceeding entitled *The People of the State of California v. Mina Safwat Hanna* (Super.
7 Ct. of California, County of San Bernardino, Rancho Cucamonga District, 2009, Case No.
8 FWV902960). On or about May 20, 2010, Respondent was sentenced to serve 120 days in a San
9 Bernardino County Jail facility and placed Respondent on probation for 36 months, with terms
10 and conditions. The circumstances underlying the conviction are that on or about July 1, 2009,
11 Fontana Police Department Officers ("Officers") conducted an undercover drug sting in which
12 Officers were to receive approximately 4 ounces of marijuana in exchange for \$1,300.00. After
13 the exchange, Officers spoke with Respondent who indicated that he received the marijuana from
14 his cousin, gave the marijuana to the person conducting the transaction and was supposed to bring
15 the money received at the transaction to his cousin. Respondent was to make \$200.00 from the
16 deal. Respondent told Officers that he had been doing drug deals for a few weeks.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Act Involving Dishonesty)**

19 12. Respondent's application is subject to denial under section 480, subdivision (a)(2) of
20 the Code in that Respondent committed an act involving dishonesty, fraud, or deceit with the
21 intent to substantially benefit himself or herself or another, or substantially injure another when
22 he took a sweater from Macy's without paying for it and when he took marijuana from his cousin,
23 provided it to another for sale and attempted to transport the money back to his cousin. The
24 conduct is described in more particularity in paragraph 10 above, inclusive and hereby
25 incorporated by reference.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Conduct Warranting Discipline of Licensee)**

3 13. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
4 the Code as defined in section 490 and section 4301, subdivision (l) of the Code in conjunction
5 with California Code of Regulations, title 16, section 1770 in that Respondent was convicted of
6 crimes substantially related to the qualifications, functions and duties of a pharmacy technician.
7 The convictions are described in more particularity in paragraphs 9 and 11 above, inclusive and
8 hereby incorporated by reference.

9 14. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
10 the Code as defined in section 490 and section 4301, subdivision (j) of the Code in that
11 Respondent violated Health and Safety Code section 11366, a statute regulating controlled
12 substances and dangerous drugs. The violation is described in more particularity in paragraph 11
13 above, inclusive and hereby incorporated by reference.

14 15. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
15 the Code as defined in section 490 and section 4301 of the Code in that Respondent committed
16 unprofessional conduct when he took a sweater from Macy's without paying for it and when he
17 took marijuana from his cousin, provided it to another for sale and attempted to transport the
18 money back to his cousin. The conduct is described in more particularity in paragraph 10 above,
19 inclusive and hereby incorporated by reference.

20 16. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
21 the Code as defined in section 490 and section 4301, subdivision (o) of the Code in that
22 Respondent violated provisions of the licensing chapter. The violations are described in more
23 particularity in paragraphs 13 through 15 above, inclusive and hereby incorporated by reference.

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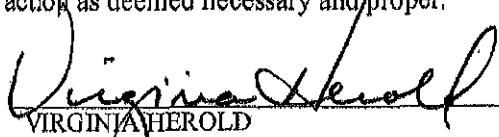
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PRAYER

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

1. Denying the application of Mina Safwat Hanna for a Pharmacy Technician Registration;
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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