

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

In the Matter of the Statement of Issues Against:

Case No. 4678

PHONEPASEUT TOMMY LOUANGAMATH
3636 42nd Avenue
Sacramento, CA 95824

OAH No. 2013090747

Pharmacy Technician Registration Applicant

Respondent.

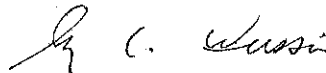
DECISION AND ORDER

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 May 5, 2014.

It is so ORDERED on April 4, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

BEFORE THE
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LOUANGAMATH,

Pharmacy Technician Registration
Applicant

Respondent.

Case No. 4678

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PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 3, 2014, in Sacramento, California.

Phillip Arthur, Deputy Attorney General, represented Virginia Herrold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Phonepaseut Tommy Louangamath (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 3, 2014.

FACTUAL FINDINGS

1. On August 20, 2012, the Board received an application for a Pharmacy Technician Registration (Application) from respondent.
2. On January 30, 2013, the Board denied respondent's Application based on two convictions for driving under the influence of alcohol. Respondent timely filed a Notice of Defense.
3. On August 14, 2013, complainant signed and thereafter filed the Statement of Issues in her official capacity. 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.

Respondent's March 30, 2011 Conviction- First DUI Conviction

4. On March 30, 2011, in the Sacramento County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level above .08 percent, a misdemeanor. Respondent was placed on three years of informal probation. He was ordered to serve 48 hours in jail. He was also ordered to complete a First Offender Six Month Drinking Drivers Program, and to pay restitution, fines and fees.

5. The incident underlying respondent's first driving under the influence (DUI) conviction occurred on July 11, 2010, at approximately 6:22 a.m. Respondent was driving his vehicle on State Route 99 in Sacramento. He had a flat tire, so he stopped his vehicle on the side of the road. He and his passenger exited the vehicle. A California Highway Patrol (CHP) officer saw respondent's vehicle pulled onto the shoulder. The officer stopped his patrol car, exited his vehicle, and approached respondent and the passenger. The officer asked if they were having mechanical difficulties with the vehicle. Respondent told the officer that his vehicle had a flat tire and that he was calling his mother. The officer noticed respondent's speech was slurred. The officer asked him if he was driving. Respondent replied that "she" was driving and pointed to the passenger. The officer then asked the female who was driving and she replied that respondent was driving. The officer asked respondent again who was driving, and respondent admitted that he was driving. The officer asked respondent for his driver's license. Respondent informed the officer that his license was suspended. When asked, respondent admitted that he drank alcohol, but stated his last drink was at 1:30 a.m. The officer conducted field sobriety tests and determined that respondent was under the influence of alcohol. Respondent's blood alcohol level was measured at .15 and .16 percent.

Respondent's March 30, 2011 Conviction- Second DUI Conviction

6. On March 30, 2011, in the Sacramento County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code sections 23152, subdivision (b), driving with a blood alcohol level above .08 percent and 14601.2, subdivision (a), driving when a license was suspended or revoked for driving under the influence of alcohol, both misdemeanors. Respondent was placed on four years of informal probation. He was ordered to serve 30 days in jail, with credit for 5 days of time served. He was also ordered to complete an 18-Month Multiple Offender Drinking Drivers Program, and to pay restitution, fines and fees.

7. The incident underlying respondent's second DUI conviction occurred on February 20, 2011, at approximately 12:50 a.m. Respondent's vehicle was stopped by a City of Sacramento police officer, after the officer observed that respondent's vehicle had a non-functioning rear parking light. When the officer contacted respondent in his vehicle, he observed that respondent had slurred speech and he smelled the odor of alcohol. The officer

conducted field sobriety tests and determined that respondent was under the influence of alcohol. Respondent's blood alcohol level was measured at .133 and .135 percent. At the time, respondent's driver license was suspended due to his July 11, 2010, DUI arrest.

Duties of a Pharmacy Technician

8. Jennifer Hall, an Inspector for the Board, testified that as part of her duties she conducts investigations and performs inspections. Inspector Hall is familiar with the duties of a pharmacy technician. She explained that a pharmacy technician provides assistance to the pharmacist, processes prescriptions, labels prescription bottles, and orders, stocks and pulls drugs from the shelf. Essentially a pharmacy technician handles many aspects of filling drug prescriptions.

Respondent's Evidence

9. Respondent is 26 years old. At hearing, respondent testified that when his convictions occurred he did not care about life. After his conviction, respondent thought about his children who are 5 and 3 years old. He wanted things to be better for his children. Respondent and his girlfriend, who is a licensed vocational nurse, both care for their children. Respondent went back to school, which changed his life. After his conviction, respondent attended Contra Cost Medical Career College. On May 31, 2012, he completed 416 hours of pharmacy technician training. In August 2012, respondent was hired to work at a Walmart Pharmacy as a pharmacy clerk. Respondent is also enrolled at Sacramento City College and hopes to obtain a degree in chemistry.

10. On June 11, 2013, respondent completed the court-ordered DUI classes. Part of the class requirement included attending a Mothers Against Drunk Driving (MADD) course. Respondent testified that the MADD course also changed his life, because he saw what could happen if you drink and drive. Respondent testified that he has learned a lot since his convictions. He still drinks alcohol, but infrequently. Other than the court-ordered programs, he has not participated in any programs to address alcohol consumption issues. Respondent is on probation until March 2015, and he is still paying the court imposed restitution, fines and fees.

LETTER OF SUPPORT FROM HAI LE

11. At hearing, respondent submitted a letter of support from Hai Le, the pharmacy manager at Walmart. Mr. Le has supervised respondent since August 2012. He described respondent as an "excellent and dedicated employee," who has contributed his skill and knowledge to his position and team. Mr. Le did not indicate in his letter whether he is aware of respondent's criminal convictions.

Discussion

12. The determination whether to deny a professional license should be made only after consideration of the conduct of the applicant and consideration of any factors introduced in justification, mitigation, aggravation and rehabilitation. The applicant "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449, *Brandt v. Fox* (1979) 90 Cal.App.3d 737 at p. 747.) Pursuant to California Code of Regulations, title 16, section 1769, subdivision (a), the Board has set forth criteria for evaluating the rehabilitation of a license applicant who has been convicted of a crime. These criteria include:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

13. At the hearing, respondent took responsibility for his illegal conduct. He showed a strong desire to change his life. He has made important strides toward turning his life around, including continuing his education and working as a pharmacy clerk. However, respondent's court imposed probation does not end until March 2015. Little weight is given to evidence of rehabilitation while a person is on probation, because it is expected that a person will act in an exemplary fashion. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (a), respondent did not establish that he has engaged in sufficient rehabilitation to receive a pharmacy technician registration. He had two alcohol-related convictions, involving high blood alcohol levels, approximately three years ago. He has yet to fully comply with the terms and conditions of his probation. Additionally, he continues to drink despite his previous abuses and other than the court-ordered programs, he has not participated in any programs to address alcohol consumption issues. Other than one letter from his supervisor, he offered no evidence from family, friends, counselors or teachers, to substantiate that he is sufficiently rehabilitated and ready to be a pharmacy technician.

The Board and the public expect a pharmacy technician to act with good judgment, responsibility, maturity and integrity. Respondent's two alcohol-related convictions, his conviction for driving when his license was suspended or revoked for driving under the influence of alcohol, and his failure to submit sufficient evidence to substantiate his rehabilitation establish that it would be inconsistent with the public health, safety and welfare to grant respondent a pharmacy technician registration at this time. Respondent's Application must, therefore, be denied.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a)(1), a license application may be denied when the applicant has been "convicted of a crime" that is substantially related to the qualifications, functions or duties of the business or profession for which application was made.¹ "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." (Bus.& Prof. Code 480, subd. (B).)

2. Pursuant to Business and Professions Code section 493, "...in a proceeding...to deny an application for a license...upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

3. In California Code of Regulations, title 16, section 1770, the Board has stated that a crime will 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."

4. Respondent's two alcohol-related convictions and his conviction for driving when his license was suspended or revoked for driving under the influence of alcohol, are substantially related to the qualifications, functions and duties of a pharmacy technician in that they evidence respondent's present or potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, or welfare. Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) As set forth in Factual Findings 4 through 7, respondent's convictions establish cause to deny respondent's

¹ Business and Professions Code section 477, subdivision (b), states that the term "license" includes "certificate, registration or other means to engage in a business or profession regulated by this code."

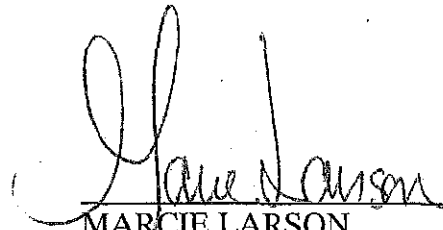
application under Business and Professions Code sections 480, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 1770.

5. As set forth in Factual Findings 9 through 13, while respondent's efforts toward rehabilitation should be commended and encouraged, respondent did not establish that he has been sufficiently rehabilitated. Therefore, it would be inconsistent with the public health, safety and welfare to issue him a pharmacy technician registration at this time.

ORDER

The Pharmacy Technician Application submitted by respondent Phoneseut Tommy Louangamath is DENIED.

DATED: February 19, 2014


MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 4678

13 **PHONEPASEUT TOMMY**
14 **LOUANGAMATH**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

Respondent.

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18 Complainant alleges:

19 PARTIES

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

22 2. On or about August 20, 2012, the California State Board of Pharmacy received an
23 application for a Pharmacy Technician Registration from Phonepaseut Tommy Louangamath
24 (Respondent). On or about August 16, 2012, Louangamath certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board of
26 Pharmacy denied the application on January 30, 2013.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. 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.

...

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

5. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.”

4 REGULATORY PROVISIONS

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

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

12 CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of a Crime)

14 Conviction No. 1

15 7. Respondent's application is subject to denial under section 480, subdivision (a)(1) of
16 the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that on or
17 about March 30, 2011, in a criminal proceeding entitled *People v. Phonepaseut Tommy*
18 *Louangamath*, in Sacramento County Superior Court, Case Number 10T05456, Respondent was
19 convicted by plea of nolo contendere of violating Vehicle Code section 23152(b), a misdemeanor.
20 The circumstances are as follows:

21 a. On or about July 11, 2010, a California Highway Patrol officer observed
22 Respondent and a female standing at the rear of a vehicle on the shoulder of State Route 99.
23 When the officer stopped and asked Respondent whether he was having any mechanical
24 difficulties with the car, Respondent's speech was slurred and he walked with an unsteady gait.
25 The officer observed that the keys to the vehicle were in the ignition and the engine was running.
26 Respondent and the female admitted that Respondent was driving when they pulled their vehicle
27 over. When Respondent provided the officer with his driver's license, Respondent admitted that
28 his driver's license was suspended. While the officer spoke with Respondent, the officer smelled

1 the odor of alcohol emitting from Respondent's breath and person, and the officer observed that
2 Respondent's eyes were red and watery and he was unsteady on his feet. Respondent's
3 Preliminary Alcohol Screening (PAS) was 0.152 percent and 0.162 percent two minutes later.
4 The officer arrested Respondent for driving under the influence and transported Respondent to the
5 Sacramento County Jail. Once at the jail, Respondent provided a blood test which revealed that
6 his Blood Alcohol Content (BAC) was 0.15 percent.

7 b. On or about March 30, 2011 Respondent was sentenced as follows: Three
8 years probation, two days of jail, a six-month High BAC First Offender Program, and a fine.

9 **Conviction No. 2**

10 8. Respondent's application is subject to denial under section 480, subdivision (a)(1) of
11 the Code, in conjunction with the California Code of Regulations, title 16, section 1770, in that on
12 or about March 30, 2011, in a criminal proceeding entitled *People v. Phonepaseut Tommy*
13 *Louangamath*, in Sacramento County Superior Court, Case Number 11T01655, Respondent was
14 convicted by a plea of nolo contendere of violating Vehicle Code sections 23152(b) and
15 14601.2(a), a misdemeanor. The circumstances are as follows:

16 a. On or about February 20, 2011, a police officer observed Respondent driving a
17 vehicle with a non-functioning passenger-side rear parking light. When the officer conducted a
18 traffic stop of Respondent, Respondent's speech was slurred and the officer noticed the odor of an
19 alcoholic beverage. The officer conducted a PAS test which revealed that Respondent's BAC
20 was 0.135 percent. The officer arrested Respondent for driving under the influence.

21 b. On or about March 30, 2011, Respondent was sentenced as follows: Four years
22 probation, 30 days of jail, an 18-month Multiple Offender DUI Program, and a fine.

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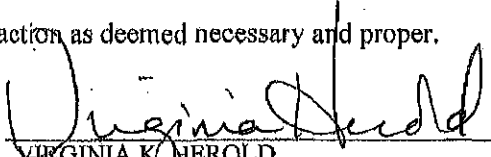
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PRAYER

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

1. Denying the application of Phonepaseut Tommy Louangamath for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/13



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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