

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

In the Matter of the Statement of Issues
Against:

TERENCE ANDRE RESER

Pharmacy Technician Applicant

Respondent.

Case No. 4889

OAH No. 2014050778

DECISION

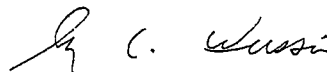
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to paragraph three on page two under Factual Findings:

“On July 25, 2006, the respondent entered a plea of nolo contendere and was convicted of trespass in violation of Municipal Code section 5711, a misdemeanor. (People v. Reser(Nev. Mun. Ct. Clark County, 2006, No. C0636250A).) The Respondent was sentenced to serve two days in jail. The conviction arose from an arrest made while respondent was standing on private property next to a closed business in Las Vegas, Nevada.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on December 26, 2014.

IT IS SO ORDERED this 26th day of November, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Statement of Issues
Against:

TERENCE ANDRE RESER,¹

Respondent.

Case No. 4889

OAH No. 2014050778

PROPOSED DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on October 23, 2014, at the Office of Administrative Hearings in Los Angeles, California.

Christina Thomas, Deputy Attorney General, appeared and represented Virginia Herold (the complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (the Board).

Terence Andre Reser (the respondent) appeared and represented himself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On January 31, 2013, the respondent filed an application with the Board for a license to act as a pharmacy technician. The respondent signed the application on November 13, 2012. On May 10, 2013, the Board denied the application.

2. On May 3, 2014, the complainant brought the Statement of Issues in her official capacity. The respondent submitted a timely request for a hearing.

¹ The record is clear that the respondent's first name is misspelled in the caption of the pleadings, including the Statement of Issues. The respondent's first name is spelled correctly in this Proposed Decision.

3. On July 25, 2006, the respondent entered a plea of nolo contendere and was convicted of trespass in violation of Municipal Code section 5711, a misdemeanor. (*People v. Reser* (Nev. Mun. Ct. Clark County, 2006, No. C0652517A).) The respondent was sentenced to serve four days in jail. The conviction arose from an arrest made while the respondent was standing on private property next to a closed business in Las Vegas, Nevada.

4. On February 13, 2006, the respondent entered a plea of nolo contendere and was convicted of unlawful possession of drug paraphernalia in violation of Municipal Code section 9527, a misdemeanor. (*People v. Reser* (Nev. Mun. Ct. Clark County, 2006, No. C0652517A).) The respondent was sentenced to serve four days in jail. The conviction arose when the respondent was stopped while crossing the street outside the crosswalk. The police officer searched the respondent and seized a marijuana pipe.

5. On September 7, 1999, the respondent entered a plea of nolo contendere and was convicted of being under the influence of a controlled substance in violation of Health and Safety Code section 11550, subdivision (a), a misdemeanor. (*People v. Reser* (Super. Ct. Los Angeles County, 1999, No. 9PN03112).) The imposition of a sentence was suspended and the respondent was placed on summary probation for 24 months. He was ordered to spend 90 days in jail and to pay \$177.75 in fees and restitution. The conviction arose from the respondent's use of cocaine.

6. On February 22, 1999, the respondent entered a plea of nolo contendere and was convicted of being under the influence of a controlled substance in violation of Health and Safety Code section 11550, subdivision (a), a misdemeanor. (*People v. Reser* (Super. Ct. Los Angeles County, 1999, No. 9PN00966).) The imposition of a sentence was suspended and the respondent was placed on summary probation for 24 months. He was ordered to spend 90 days in jail and to pay \$100 in fees and restitution. The conviction arose from the respondent's use of cocaine.

7. On September 1, 1998, the respondent entered a plea of guilty and was convicted of soliciting narcotics in violation of Health and Safety Code section 653F, subdivision (d), a misdemeanor. (*People v. Reser* (Super. Ct. Los Angeles County, 1998, No. 8PN01241).) The imposition of a sentence was suspended and the respondent was placed on summary probation for 24 months. He was ordered to spend 15 days in jail. The conviction arose when the respondent attempted to purchase cocaine from an undercover police officer.

8. To apply for the subject license, the respondent completed a Pharmacy Technician Application. At section seven of the application, the respondent was asked the following question: "Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country?" Directly below the question, the respondent was given the following instruction:

Check the box next to "Yes" if . . . you have ever been convicted or plead [*sic.*] guilty to any crime. "Conviction" includes a plea of no contest and any conviction that has been set aside or deferred pursuant

to sections 1000 or 1203.4 of the Penal Code, including infractions, misdemeanors, felonies. You do not need to report a conviction for an infraction with a fine of less than \$300 unless the infraction involved alcohol or controlled substances. You must, however, disclose any convictions in which you entered a plea [of] no contest and any convictions that were subsequently set aside pursuant or deferred pursuant to sections 1000 or 1203.4 of the Penal Code.

Check the box next to "NO" if you have not been convicted of a crime.

You may wish to provide the following information in order to assist in the processing of your application: descriptive explanation of the circumstances surrounding the conviction (i.e. dates and location of incident and all circumstances surrounding the incident.) If documents were purged by the arresting agency and/or court, a letter of explanation from these agencies is required.

Failure to disclose a disciplinary action or conviction may result in the license being denied or revoked for falsifying the application. Attach additional sheets if necessary.

(Emphasis in original.)

9. The respondent checked the box "NO" next to question number seven, even though he knew that he had been convicted of the above crimes. After inquiring with a teacher at his training program, he believed that he was not required to disclose any conviction more than seven years before his application.

10. The respondent is not currently married. He supports a 12-year-old daughter and pays support obligation for a six-year-old child. He has not used drugs since 2007.

11. He is currently employed, working for a surgeon. His employer is satisfied with the respondent's performance. His employer considers the respondent to be personable, genuine, and naturally friendly and compassionate.

12. The respondent is a student in a medical assistant/cardiac technician training program. He has demonstrated his ability to effectively apply principles of leadership and management. He is described as honest, loyal and committed to every responsibility he assumes. His grade point average is 95.75%, which is comparable to an A in letter grading.

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LEGAL CONCLUSIONS

1. Cause exists to deny the respondent's license application under Business and Professions Code section 480, subdivision (a)(1), because he was convicted of five crimes. (Factual Findings, paragraphs 1 through 5; Legal Conclusions, paragraphs 4 through 13.)

2. Cause exists to deny the respondent's license application under Business and Professions Code sections 480, subdivision (c), because he knowingly made a false statement of fact required to be revealed in the application for the license. (Factual Findings, paragraphs 1 through 5; Legal Conclusions, paragraphs 4 through 13.)

3. Cause exists to deny the respondent's license application under Business and Professions Code sections 480, subdivision (a)(3), and 4301, subdivision (p), because the respondent engaged in unprofessional conduct that would warrant discipline of a licentiate. (Factual Findings, paragraphs 1 through 5; Legal Conclusions, paragraphs 4 through 13.)

4. Business and Professions Code section 480, subdivision (a)(1), provides that a board may deny a license on the grounds that the applicant has been convicted of a crime.

5. The board may deny a license if (A) the applicant has done any act that would be grounds for discipline if done by a licensee and (B) the act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. (Bus. & Prof. Code, § 480, subd. (a)(3).)

6. 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. (Bus. & Prof. Code, § 480, subd. (c).)

7. 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, actions or conduct that would have warranted denial of a license. (Bus. & Prof. Code § 4301, subd. (p).)

8. When a person seeks to establish that he is entitled to government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) Except as otherwise provided by law, the burden of proof in civil cases requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

9. In this case, the respondent's convictions were for crimes substantially related to the qualifications, functions and duties of a licensed pharmacy technician because the drug convictions evidence a potential unfitness to perform as a licensee. (Cal. Code Regs., tit.16, § 1770.) All of his convictions related, directly or indirectly, to the abuse of controlled substances. The five convictions exhibit a chronic disregard of the law and a compulsion to use narcotics, the very substance that he would handle as a pharmacy technician.

10. The respondent offered evidence of mitigation and rehabilitation. The respondent has not been convicted of any crime since 2006. He has not consumed drugs since 2007. The respondent supports a 12-year-old daughter and pays child support for a six-year-old child. He is currently employed and working to his employer's satisfaction. The respondent offered character references to show that he is viewed by others as personable, genuine, and naturally friendly and committed. The respondent is a student in a medical assistant/cardiac technician training program, which exhibits self-improvement. His high grade point average displays an intellectual command of his subject matter.


11. However, by failing to disclose his convictions, the claimant made a false representation of his qualifications. The omission was material because the convictions were potentially disqualifying conduct. The misrepresentation was willful because the claimant knew he had five convictions in his past. His purported reliance on information about a seven year limitation period was not credible because two of the convictions occurred less than seven years before November 31, 2012, the date the respondent signed his application. His belief was otherwise not warranted in light of the clear instructions on the face the application.

12. At this time, the interests of society will be better served and protected by denying the respondent's application for a license to be a pharmacy technician.

ORDER

The application of Terence Rene Reser for a license to act as a pharmacy technician is denied.

DATED: October 31, 2014


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Supervising Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2557
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

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

Case No. 4889

13 **TERRENCE ANDRE RESER**

STATEMENT OF ISSUES

14 Pharmacy Technician Registration Applicant

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about January 31, 2013, the Board received an application for a Pharmacy
23 Technician Registration from Terrence Andre Reser (Respondent). On or about November 13,
24 2012, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on May 10, 2013.

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1 JURISDICTION

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

5 STATUTORY PROVISIONS

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

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

4 5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
5 on the ground that the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, or duties of the business or profession for which the license was issued..

7 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
8 subject to discipline, including suspension or revocation.

9 7. Section 4301 states, in pertinent part:

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

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

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

22 "(k) The conviction of more than one misdemeanor or any felony involving the use,
23 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
24 combination of those substances.

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
5 dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14

15 "(p) Actions or conduct that would have warranted denial of a license."

16 **REGULATORY PROVISIONS**

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

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

24 9. **CONTROLLED SUBSTANCE/DANGEROUS DRUGS**

25 a. "Cocaine," is a Schedule I controlled substance, as designated in Health and Safety
26 Code section 11054, subdivision (f)(1), and a Schedule II controlled substance, as designated in
27 Health and Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to
28 section 4022

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

3 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
4 that Respondent was convicted of crimes substantially related to the qualifications, functions or
5 duties of a pharmacy technician, as follows:

6 a. On or about May 4, 2006 Respondent was arrested for trespassing.

7 b. On or about July 25, 2006, after pleading nolo contendere, Respondent was convicted
8 of violating Municipal Code section 5711 [trespassing] in the criminal proceeding entitled *The*
9 *City of Nevada v. Terence Andre Reser* (Mun. Ct. Las Vegas, Regional Justice Center, Clark
10 County, 2006, No. C0652517A). The Court sentenced Respondent to serve four days in Clark
11 County Jail.

12 c. On or about November 5, 2005, Respondent was arrested for unlawful use/possession
13 of drug paraphernalia

14 d. On or about February 13, 2006, after pleading nolo contendere, Respondent was
15 convicted of violating Municipal Code section 9527 [unlawful use/possession of drug
16 paraphernalia] in the criminal proceeding entitled *The City of Nevada v. Terence Andre Reser*
17 (Mun. Ct. Las Vegas, Clark County, 2006, No. C0636250A). The Court sentenced Respondent to
18 serve two days in Clark County Jail.

19 e. On or about September 7, 1999, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count of violating Health and Safety Code section 11550,
21 subdivision (a) [under the influence of a controlled substance] in the criminal proceeding entitled
22 *The People of the State of California v. Terence Reser* (Super. Ct. L.A. County, 1999, No.
23 9PN03112). The Court sentenced Respondent to serve 90 days in Los Angeles County Jail and
24 placed on 24 months probation, with terms and conditions.

25 f. The circumstances surrounding the conviction are that on or about May 27, 1999,
26 Respondent was observed by a Los Angeles Police officer crossing the street and nearly getting
27 struck by a passing vehicle. As he walked towards the officer he appeared to be walking rigid,
28 continuously looking around and over his shoulder, and seemed to be agitated. While speaking to

1 Respondent, the officer could observe sweat on his forehead, mood changes, a dry mouth,
2 chapped lips, and burnt fingertips with discoloration. Based on the objective signs and symptoms
3 of Respondent, it was determined that he was under the influence of Cocaine, a controlled
4 substance, and was subsequently arrested.

5 g. On or about February 22, 1999, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Health and Safety Code section 11550,
7 subdivision (a) [under the influence of a controlled substance] in the criminal proceeding entitled
8 *The People of the State of California v. Terrance Andre Reser* (Super. Ct. Los Angeles County,
9 1999, No. 9PN00966). The Court sentenced Respondent to serve 90 days in Los Angeles County
10 Jail and placed on 24 months probation, with terms and conditions.

11 h. The circumstances surrounding the conviction are that on or about February 15, 1999,
12 Respondent was approached by a Los Angeles Police Officer. While speaking to Respondent, the
13 officer observed him to be sweating heavily, had burnt fingertips, was speaking rapidly, and had a
14 very dry mouth. Respondent was subsequently arrested for being under the influence of a
15 controlled substance. During the booking procedure, Respondent admitted to "smoking a dime"
16 earlier that morning.

17 i. On or about September 1, 1998, respondent was convicted of one misdemeanor count
18 of violating Health and Safety Code section 653F, subdivision (d) [soliciting narcotics] in the
19 criminal proceeding entitled *The People of the State of California v. Terrence Reser* (Super. Ct.
20 Los Angeles County, 1998, No. 8PN01241). The Court sentenced Respondent to serve 15 days in
21 Los Angeles County jail and placed him on 24 months probation, with terms and conditions.

22 j. The circumstances surrounding the conviction are that on or about February 20, 1998,
23 Respondent attempted to purchase narcotics from an undercover police officer. He approached
24 the officer and stated, "I want a twenty dollar rock." Respondent was subsequently arrested for
25 soliciting narcotics.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Knowingly Made a False Statement of Fact)

11. Respondent's application is subject to denial under sections 480, subdivision (c), in that on or about November 13, 2012, Respondent knowingly made a false statement of fact by failing to disclose his convictions, on his application for licensure. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the foregoing was true and correct, on his application for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 10, subparagraphs (a) through (j), inclusive, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

12. Respondent's application is subject to denial under sections 4301, subdivision (p) and 480, subdivisions (a)(3)A and (a)(3)B, in that Respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of his license, as follows:

a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a), (c), (e), (g), and (i), inclusive, as though set forth fully.

b. Respondent was found to be under the influence of Cocaine, a controlled substance in violation of section 4301, subdivisions (h) and (j). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (f) and (h), inclusive, as though set forth full.

c. Respondent has more than one conviction involving the use of a controlled substance in violation of section 4301, subdivisions (k) and (j). Complainant refers to, and by this reference

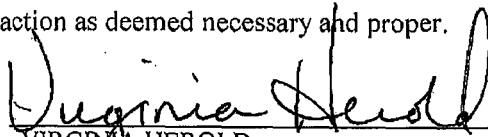
1 incorporates, the allegations set forth above in paragraph 10, subparagraph (e) and (g), inclusive,
2 as though set forth full.

3 **PRAYER**

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

- 6 1. Denying the application of Terrence Andre Reser for a Pharmacy Technician
7 Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 5/13/14



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

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