

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

In the Matter of the Statement of Issues
Against:

**SAV-RX PRESCRIPTION SERVICES,
WILLIAM ARNOLD, PHARMACIST-
IN-CHARGE
JAMES BARTA, OWNER**

Nonresident Pharmacy Permit Applicant

Respondent.

Case No. 4890

OAH No. 2014040222

DECISION AND ORDER

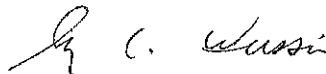
The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 15, 2015.

It is so ORDERED on April 15, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

BEFORE THE
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STATE OF CALIFORNIA

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SAV-RX PRESCRIPTION SERVICES,
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JAMES BARTA, OWNER,¹

Respondent.

Case No. 4890

OAH No. 2014040222

PROPOSED DECISION ON REMAND

This matter was originally heard before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on July 21, 2014, in Sacramento, California, and remanded to the ALJ on October 7, 2014.

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

Homero Vela, Susan Trujillo and Marian Zapata-Rossa, Attorneys at Law, represented Sav-Rx Prescription Services (respondent).

FACTUAL FINDINGS

Procedural History

1. On October 12, 2012, the Board received an application for a nonresident pharmacy permit from respondent. The application indicated that James Barta was respondent's sole owner and president.

¹ The Statement of Issues originally listed in the caption Christy Piti, CEO, and Walter Hoff, CFO. At the July 21, 2014 hearing, complainant deleted Ms. Piti and Mr. Hoff from the caption. Ms. Piti and Mr. Hoff are not parties in this matter.

2. On May 6, 2013, the Board denied the application. Respondent appealed from the denial.

3. On March 27, 2014, complainant filed a Statement of Issues against respondent, which alleged that respondent's application should be denied based upon Mr. Barta's conviction for violating Title 18 of the United States Code, section 371, conspiracy to commit bribery, a felony, and the acts underlying his conviction.

4. On July 21, 2014, a hearing was held before the ALJ on the Statement of Issues. On August 8, 2014, the ALJ issued a Proposed Decision denying respondent's application. On September 9, 2014, the Board issued a Decision and Order, adopting the Proposed Decision as its Decision, effective October 9, 2014.

5. On September 19, 2014, the Board received a petition for reconsideration from respondent. On October 7, 2014, the Board issued an Order Granting Reconsideration and Order of Remand to Administrative Law Judge, by which the Board vacated its September 9, 2014 Decision, and remanded the matter to the ALJ "for the taking of additional evidence and/or argument as soon as practicable directed exclusively to the issue of Respondent James Barta's 2013 conviction in federal court."

6. On October 29, 2014, an Order After Remand was issued, which set up a briefing schedule for the parties to brief the issues relating to the effect that should be given to an order issued by the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) regarding Mr. Barta's conviction.

7. On November 14, 2014, respondent submitted a request to stay the briefing schedule pending the issuance of an opinion from the Seventh Circuit and the lapse of time for requesting a hearing en banc. On November 18, 2014, an Order Staying Briefing Schedule was issued, granting respondent's request.

8. On February 16, 2015, respondent submitted a status update, which attached an Opinion by the Seventh Circuit, remanding the case to the lower court with instructions to enter a judgment acquitting Mr. Barta.

9. On February 27, 2015, complainant submitted a request for OAH to proceed with a proposed decision on remand.

10. On March 11, 2015, a telephonic conference was held before the ALJ. Pursuant to the agreement of the parties during the telephonic conference: (1) the Order After Remand issued on October 29, 2014, was marked as Exhibit 7 and admitted; (2) the Order Staying Briefing Schedule issued on November 18, 2014, was marked as Exhibit 8 and admitted; (3) respondent's Status Update and Request for Teleconference dated February 16, 2015, including the three exhibits attached thereto, was marked as Exhibit N and admitted;

(4) complainant's letter dated February 27, 2015, was marked as Exhibit 9 and admitted. The parties stated that they did not wish to offer any further evidence or arguments.

11. The record closed and this matter was submitted for a proposed decision on remand on March 11, 2015.

Conviction History

12. On September 24, 2013, in the United States District Court, Northern District of Illinois (District Court), upon a verdict after trial, Mr. Barta was convicted of violating Title 18 of the United States Code, section 371, conspiracy to commit bribery, a felony.

13. Mr. Barta appealed his conviction to the Seventh Circuit. On January 28, 2015, the Seventh Circuit issued an Opinion, reversing Mr. Barta's conviction and remanding the matter to the District Court with instructions to enter a judgment of acquittal.

Discussion

14. At the hearing before the ALJ on July 21, 2014, in support of the denial of respondent's application, complainant submitted certified court records regarding Mr. Barta's conviction and a copy of the grand jury's indictment. Other than these exhibits, complainant did not offer any further evidence to establish that respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit or corruption.

15. The Seventh Circuit has reversed Mr. Barta's conviction and has ordered the District Court to enter a judgment of acquittal. In light of the Seventh Circuit's Opinion, there is no longer any evidence in this matter to support the denial of respondent's application. Consequently, respondent's application must be granted.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, in relevant part, provides:

(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. ...

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

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

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.²

2. Business and Professions Code section 4301, in relevant part, provides that the Board "shall take action against the holder of a license who is guilty of unprofessional conduct." Subdivision (l) of that section defines "unprofessional conduct" to include a "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee."

3. In light of the Seventh Circuit's Opinion reversing Mr. Barta's conviction and ordering him acquitted, there is no evidence to establish cause to deny respondent's application under Business and Professions Code sections 480, subdivision (a), or 4301, subdivision (l).

4. Business and Professions Code section 4301, subdivision (f), defines "unprofessional conduct" to include the "commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not."

5. Complainant did not offer any evidence other than Mr. Barta's now overturned conviction to establish cause for denial of respondent's application under Business and Professions Code section 4301, subdivision (f), by and through Business and Professions Code section 480, subdivisions (a)(2) and (a)(3). Consequently, complainant did not establish cause to deny respondent's application under these statutory provisions.

6. Because there is no longer any evidence to support a denial of respondent's application, respondent's application must be granted

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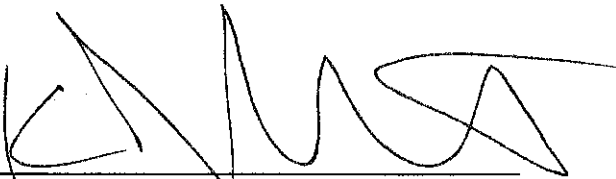
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² Business and Professions Code section 477, subdivision (b), states, "License" includes certificate, registration or other means to engage in a business or profession regulated by this code." Business and Professions Code section 4032 states, "License" means and includes any license, permit, registration, certificate, or exemption issued by the board and includes the process of applying for and renewing the same."

ORDER

The Nonresident Pharmacy Permit Application submitted by respondent Sav-Rx Prescription Services is GRANTED.

DATED: March 18, 2015



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 4890

13 **SAV-RX PRESCRIPTION SERVICES**

STATEMENT OF ISSUES

14 [REDACTED]
15 **JAMES BARTA, OWNER**
16 [REDACTED]

17 **Nonresident Pharmacy Permit Applicant**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about October 12, 2012, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Nonresident Pharmacy Permit from Sav-Rx Prescription
26 Services, [REDACTED] (Respondent). On or about October 5, 2012,
27 Respondent's sole owner and president, James Barta, as well as Respondents' two chief financial
28 officers, [REDACTED] and [REDACTED] certified under penalty of perjury to the truthfulness of all

1 statements, answers, and representations in the application. The Board denied the application on
2 May 6, 2013.

3 JURISDICTION

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

7 STATUTORY PROVISIONS

8 4. Section 480 of the Business and Professions Code ("Code") provides, in pertinent
9 part:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this
12 section means a plea or verdict of guilty or a conviction following a plea of nolo
13 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
14 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.

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

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

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

19 5. Section 493 of the Code states:

20 Notwithstanding any other provision of law, in a proceeding conducted by a
21 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
22 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
23 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
24 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
25 related to the qualifications, functions, and duties of the licensee in question.

26 As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

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1 6. Section 4300 of the Code states, in pertinent part that the board may refuse a license
2 to any applicant guilty of unprofessional conduct.

3 7. Section 4301 of the Code states, in pertinent part:

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

8 ...
9 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
10 deceit, or corruption, whether the act is committed in the course of relations as a
11 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

20 REGULATORY PROVISION

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

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

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Conviction)**

3 9. Respondent's application is subject to denial under section 4301, subdivision (f), of
4 the Code, by and through section 480, subdivisions (a)(1) and (a)(3), of the Code, in conjunction
5 with California Code of Regulations, title 16, section 1770, in that on or about September 24,
6 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in United States
7 District Court, Northern District of Illinois, Case Number 12cr00487-1, Respondent's sole owner
8 and president, James Barta, was convicted by verdict after trial of violating Title 18 of the United
9 States Code, section 371 (conspiracy to commit offense or to defraud the United States), a felony.
10 The circumstances are as follows:

11 a. From on or about from November 15, 2011, to June 28, 2012, Respondent's
12 sole owner and president, James Barta, offered to pay \$6,500 to an agent of Los Angeles County
13 in exchange for a contract for Respondent to provide pharmaceutical services to Los Angeles
14 County.

15 b. On or about September 24, 2013, James Barta was sentenced as follows:
16 Twenty-one months in federal prison and a fine of \$125,000.00.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption)**

19 10. Respondent's application is subject to denial under section 4301, subdivision (f), of
20 the Code, by and through section 480, subdivisions (a)(2)-(3), of the Code, in that on or about
21 September 24, 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in
22 United States District Court, Northern District of Illinois, Case Number 12cr00487-1,
23 Respondent's sole owner and president, James Barta, was convicted by verdict after trial of
24 violating Title 18 of the United States Code, section 371 (conspiracy to commit offense or to
25 defraud the United States), a felony. The circumstances are more fully set forth in paragraph 9
26 and its subparts.

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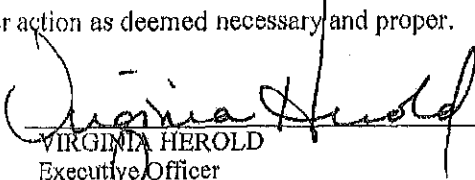
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1 PRAYER

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

- 4 1. Denying the application of Sav-Rx Prescription Services, [REDACTED]
5 [REDACTED] for a Nonresident Pharmacy Permit; and
6 2. Taking such other and further action as deemed necessary and proper.

7 DATED: 3/27/14

8 
9 VIRGINIA HEROLD
10 Executive Officer
11 Board of Pharmacy
12 Department of Consumer Affairs
13 State of California
14 Complainant

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**BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

**SAV-RX PRESCRIPTION SERVICES,
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CHARGE,
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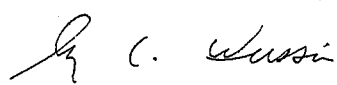
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 9, 2014.

It is so ORDERED on September 9, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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JAMES BARTA, OWNER,¹

Respondent.

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PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 21, 2014, in Sacramento, California.

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

Homero Vela, Attorney at Law, represented Sav-Rx Prescription Services (respondent).

Evidence was received on July 21, 2014. The record remained open to allow the parties to file closing briefs. On July 26, 2014, respondent filed a closing brief, which was marked as Exhibit L. On July 30, 2014, complainant filed a reply brief, which was marked as Exhibit 6. The record closed, and the matter was submitted for decision on July 30, 2014.

FACTUAL FINDINGS

1. On October 12, 2012, the Board received an application for a nonresident pharmacy permit from respondent. The application indicated that James Barta was respondent's sole owner and president. On May 6, 2013, the Board denied the application.

¹ The Statement of Issues originally listed in the caption Christy Piti, CEO, and Walter Hoff, CFO. At hearing, complainant deleted Ms. Piti and Mr. Hoff from the caption. Ms. Piti and Mr. Hoff are not parties in this matter.

Respondent appealed from the denial. In the Statement of Issues, complainant alleges that respondent's application should be denied based upon Mr. Barta's conviction described below and the acts underlying his conviction.

Barta's Conviction

2. On September 24, 2013, in the United States District Court, Northern District of Illinois, upon a verdict after trial, Mr. Barta was convicted of violating Title 18 of the United States Code, section 371, conspiracy to commit bribery, a felony. Mr. Barta was ordered to be imprisoned for 21 months. In addition, he was ordered to pay a fine of \$125,000 and an assessment of \$100. The indictment, among other things, alleged that Mr. Barta paid \$6,500 to an agent of Los Angeles County in an effort to obtain a contract to provide pharmaceutical services to Los Angeles County.

Respondent's Application and the Board's Denial

3. On October 12, 2012, the Board received a Nonresident Pharmacy Permit Application (application) from respondent. The application listed Mr. Barta as the "owner" of respondent, and stated that Mr. Barta owned 100 percent of the stock in respondent.

4. On January 15, 2013, a Board Enforcement Analyst sent a letter to Mr. Barta notifying him that the Board had received notice about the pending federal criminal matter against him, and requesting that he provide certain information in regard to that criminal matter. The letter informed Mr. Barta that the Board could not complete its review of the application until it had received the requested information.

5. On February 4, 2013, Mark Hechinger, counsel for respondent, responded to the Board's January 15, 2013 letter. In his letter, Mr. Hechinger stated that Mr. Barta was "an owner and officer" of respondent and its parent company, A&A Drug Company. Mr. Hechinger's letter enclosed the indictment that had been filed against Mr. Barta. According to Mr. Hechinger, the illegal actions alleged against Mr. Barta were "unrelated to the day-to-day business activities" of respondent, and were "taken by Mr. Barta alone." While Mr. Barta was awaiting trial on the indictment, he was on "administrative leave" from respondent and was not taking part in the "daily operational activities of the company." Mr. Hechinger's letter explained further that Mr. Barta had "placed his ownership interest in [respondent] into a trust that is administered by an independent trustee," and that Mr. Barta could not "buy, sell, or vote any of his stock or exercise any of his rights as an owner of A&A Drug Company or [respondent] until that criminal matter [was] resolved." Ms. Christy Piti, a registered pharmacist and the Chief Executive Officer of respondent, was "managing the day-to-day operations of [respondent] including control over the client bank accounts."

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6. On February 12, 2013, a Board Enforcement Analyst wrote to Mr. Hechinger, stating:

The Board has completed the review of the information you provided regarding the pending United States case against Mr. Barta. While the Board is aware that Mr. Barta has placed ownership of the company into trust, we are unable to approve a license at this time with the case still pending. [The] Board is recommending that [respondent] withdraw the application and re-submit once the court case has been resolved.

Respondent did not withdraw its application as recommended in the February 12, 2013 letter.

7. On May 6, 2013, a denial letter signed by the Board's Assistant Executive Officer was sent to respondent. That letter, in relevant part, stated:

The California State Board of Pharmacy is denying your Nonresident Pharmacy Permit application pursuant to but not limited to 480(a)(3) of the Business and Professions Code. This denial is based upon the pending criminal case against James Barta. The Board cannot approve a permit during an on going criminal trial.

8. By letter dated July 2, 2013, respondent appealed from the Board's denial.

9. On April 3, 2014, after Mr. Barta had been convicted of conspiracy to commit bribery, complainant served the Statement of Issues on respondent. The Statement of Issues alleged two grounds for denying respondent's application: (1) under Business and Professions Code sections 4301, subdivision (l), and 480, subdivisions (a)(1) and (a)(3), based upon Mr. Barta's federal felony conviction for conspiracy to commit bribery; and (2) under Business and Professions Code sections 4301, subdivision (f), and 480, subdivisions (a)(2) and (a)(3), for Mr. Barta's having committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, based upon his federal felony conviction for conspiracy to commit bribery.

Respondent's Procedural Arguments

10. At the hearing and in its post-hearing brief, respondent raised several procedural arguments against the Board's denial of its application, including that: (1) the Board improperly denied respondent's application based upon Mr. Barta's indictment before Mr. Barta had been convicted; (2) the Board improperly denied respondent's application based upon allegations in the indictment without conducting an independent investigation; (3) the Board failed to follow its own procedures in denying respondent's application; (4) the Board is prohibited from denying an application based upon bad moral character; (5) the

Board failed to provide due process to respondent; and (6) no allegations extraneous to the Statement of Issues may be taken into consideration in this proceeding in denying respondent's application. As set forth below, respondent's procedural arguments are not persuasive.

11. As both parties agreed in their post-hearing briefs, the Statement of Issues is the operative pleading in this matter. That the Board may have relied upon a different basis for denying respondent's application in its denial letter before issuing the Statement of Issues is not relevant to this proceeding. The extent to which the Board may have conducted an investigation into the allegations set forth in the indictment against Mr. Barta before issuing the denial letter and the Statement of Issues is also not relevant to this proceeding. The only causes for denial of respondent's application relevant in this proceeding are those set forth in the Statement of Issues. (See, e.g., *Smith v. State Board of Pharmacy* (1995) 37 Cal.App.4th 229, 241; *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [a decision must be based on the legal and factual allegations in the operative pleading].) The only evidence that can be relied upon in determining whether the denial should be upheld is that which was offered and admitted during the course of the hearing. There was no indication that complainant failed to follow the procedures set forth in the Administrative Procedure Act (APA), Government Code section 11400 et seq., in serving the Statement of Issues. There was no evidence to establish that respondent did not receive all the due process required by the APA. All of the procedural arguments respondent raised in this matter are without merit and are rejected.

Hearing Testimony and Exhibits

12. Ms. Piti testified on behalf of respondent. Ms. Piti is the daughter of Mr. Barta. After her father's federal felony conviction, Ms. Piti and her brother took over ownership of respondent's stock. Ms. Piti described respondent as a prescription management company with a "small" mail order pharmacy business. Respondent holds licenses in 45 states. According to Ms. Piti, respondent submitted all the disclosures required by these states regarding her father's conviction and the change of ownership of respondent. Ms. Piti testified that none of these states have taken action to revoke respondent's licenses. Ms. Piti believes that the reputation that respondent may get by receiving a license denial from California would hinder respondent's efforts to compete against larger companies in the industry.

13. Respondent submitted a Trust Agreement dated August 1, 2012, which, in relevant part, provided that Mr. Barta's 100 percent ownership interest in A&A Drug Company would be transferred to the Trustee, who was granted the authority to make "decisions as to when and to what extent the original assets of the Trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested, without any participation in, or knowledge of, such decision by [Mr. Barta] during the time that the Charge is pending." The Trust Agreement defined the "Charge" as the federal criminal proceeding against Mr. Barta described in Finding 2 above. The Trust Agreement provided further that the Trust would terminate upon Mr. Barta's conviction of the Charge. The Trust

Agreement also stated that, upon termination of the Trust, the Trustee would “make full and proper accounting and turn over to [Mr. Barta] all assets of the Trust then held by it [sic] the said Trustee.”

Discussion

14. Government Code section 11504 provides that a “statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing.” Thus, the burden was on respondent to establish its fitness for licensure. Respondent’s application stated that Mr. Barta owned 100 percent of respondent’s stock. After a trial, Mr. Barta was convicted in federal court of conspiracy to commit bribery, a felony. That conviction was based on Mr. Barta’s efforts to obtain a pharmaceutical contract through bribery.

15. When reviewing whether to deny a license, the Board considers the following criteria: (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; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) evidence, if any, of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769.)

16. The evidence in this case established that Mr. Barta engaged in illegal conduct that is substantially related to the qualifications, duties and functions of a Board licensee. Mr. Barta was convicted on September 24, 2013, less than one year ago. Ms. Piti testified that the ownership of respondent’s stock has been transferred to herself and her brother, both of whom are Mr. Barta’s children. Although respondent asserted that a Trust was put in place to divest Mr. Barta of ownership and control over respondent, the terms of the Trust Agreement do not support that assertion. Instead, the Trust Agreement provides that all the Trust’s assets would revert back to Mr. Barta upon his conviction. Respondent did not submit sufficient evidence to establish that Mr. Barta no longer has any control over or involvement in respondent. Respondent did not submit any evidence to show that it has put in place training for its owners, managers, supervisors and employees or other safeguards to ensure that the criminal conduct in which Mr. Barta engaged will not be repeated. There was no evidence to demonstrate that respondent’s owners and managers have accepted any accountability for Mr. Barta’s wrongdoing or have gained any insight to provide adequate assurances that respondent can be trusted to comply with all applicable laws and regulations in the future. In sum, respondent did not submit adequate evidence to establish that it and its owners and management have engaged in sufficient rehabilitation to ensure that the public health, safety and welfare would be adequately protected if respondent were issued the permit it seeks.

17. The protection of the public is the Board’s highest priority and paramount concern when exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof.

Code, § 4001.1.) In light of Mr. Barta's federal felony conviction for conspiracy to commit bribery in an effort to obtain a pharmaceutical contract, respondent bore the burden of demonstrating that it can be relied upon to obey all laws and regulations, and to act in a manner that is upright, honest, and consistent with professional standards of conduct. Respondent failed to submit sufficient evidence to meet its burden of proof. Consequently, respondent's application must be denied.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, in relevant part, provides:

(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. ...

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

(3) (A) Done any act that if done by a licensee 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.²

2. Business and Professions Code section 4301, in relevant part, provides that the Board "shall take action against the holder of a license who is guilty of unprofessional conduct." Subdivision (1) of that section defines "unprofessional conduct" to include a "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee."

3. Under California Code of Regulations, title 16, section 1770, a crime or act is considered to be substantially related to the qualifications, functions or duties of a Board licensee "if to a substantial degree it evidences present or potential unfitness of a licensee or

² Business and Professions Code section 477, subdivision (b), states, "'License' includes certificate, registration or other means to engage in a business or profession regulated by this code." Business and Professions Code section 4032 states, "'License' means and includes any license, permit, registration, certificate, or exemption issued by the board and includes the process of applying for and renewing the same."

registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

4. The federal felony conviction for conspiracy to commit bribery sustained by Mr. Barta, respondent’s sole stockholder at the time of application, to a substantial degree, evidences the present or potential unfitness of respondent to perform the functions authorized by the permit it seeks in a manner consistent with the public health, safety, and welfare. Mr. Barta’s conviction is therefore substantially related to the qualifications, functions, and duties of the business or profession for which the application was made under California Code of Regulations, title 16, section 1770, and constitutes cause to deny respondent’s application under Business and Professions Code section 4301, subdivision (1), by and through Business and Professions Code section 480, subdivisions (a)(1) and (a)(3).

5. Business and Professions Code section 4301, subdivision (f), defines “unprofessional conduct” to include the “commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.”

6. Mr. Barta’s federal felony conviction for conspiracy to commit bribery establishes that he committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. Consequently, respondent’s application is subject to denial under Business and Professions Code section 4301, subdivision (f), by and through Business and Professions Code section 480, subdivisions (a)(2) and (a)(3).

7. As set forth in Findings 14 through 17, respondent failed to submit sufficient evidence at the hearing to establish that it would be consistent with the public health, safety and welfare to issue respondent the permit it seeks. Consequently, respondent’s application must be denied.

ORDER

The Nonresident Pharmacy Permit Application submitted by respondent Sav-Rx Prescription Services is DENIED.

DATED: August 8, 2014



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

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8
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. 4890

13 **SAV-RX PRESCRIPTION SERVICES**

STATEMENT OF ISSUES

14 [REDACTED]
15 **JAMES BARTA, OWNER**
16 [REDACTED]

17 **Nonresident Pharmacy Permit Applicant**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about October 12, 2012, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Nonresident Pharmacy Permit from Sav-Rx Prescription
26 Services, [REDACTED] (Respondent). On or about October 5, 2012,
27 Respondent's sole owner and president, James Barta, as well as Respondents' two chief financial
28 officers, [REDACTED] and [REDACTED] certified under penalty of perjury to the truthfulness of all

1 statements, answers, and representations in the application. The Board denied the application on
2 May 6, 2013.

3 JURISDICTION

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

7 STATUTORY PROVISIONS

8 4. Section 480 of the Business and Professions Code ("Code") provides, in pertinent
9 part:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this
12 section means a plea or verdict of guilty or a conviction following a plea of nolo
13 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
14 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.

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

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

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

19 5. Section 493 of the Code states:

20 Notwithstanding any other provision of law, in a proceeding conducted by a
21 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
22 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
23 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
24 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
25 related to the qualifications, functions, and duties of the licensee in question.

26 As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

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1 6. Section 4300 of the Code states, in pertinent part that the board may refuse a license
2 to any applicant guilty of unprofessional conduct.

3 7. Section 4301 of the Code states, in pertinent part:

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

8 ...

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

12 ...

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

REGULATORY PROVISION

8. 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.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Conviction)**

3 9. Respondent's application is subject to denial under section 4301, subdivision (f), of
4 the Code, by and through section 480, subdivisions (a)(1) and (a)(3), of the Code, in conjunction
5 with California Code of Regulations, title 16, section 1770, in that on or about September 24,
6 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in United States
7 District Court, Northern District of Illinois, Case Number 12cr00487-1, Respondent's sole owner
8 and president, James Barta, was convicted by verdict after trial of violating Title 18 of the United
9 States Code, section 371 (conspiracy to commit offense or to defraud the United States), a felony.
10 The circumstances are as follows:

11 a. From on or about from November 15, 2011, to June 28, 2012, Respondent's
12 sole owner and president, James Barta, offered to pay \$6,500 to an agent of Los Angeles County
13 in exchange for a contract for Respondent to provide pharmaceutical services to Los Angeles
14 County.

15 b. On or about September 24, 2013, James Barta was sentenced as follows:
16 Twenty-one months in federal prison and a fine of \$125,000.00.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption)**

19 10. Respondent's application is subject to denial under section 4301, subdivision (f), of
20 the Code, by and through section 480, subdivisions (a)(2)-(3), of the Code, in that on or about
21 September 24, 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in
22 United States District Court, Northern District of Illinois, Case Number 12cr00487-1,
23 Respondent's sole owner and president, James Barta, was convicted by verdict after trial of
24 violating Title 18 of the United States Code, section 371 (conspiracy to commit offense or to
25 defraud the United States), a felony. The circumstances are more fully set forth in paragraph 9
26 and its subparts.

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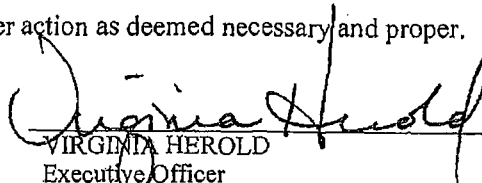
PRAYER

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 Sav-Rx Prescription Services, [REDACTED]
[REDACTED] for a Nonresident Pharmacy Permit; and
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/27/14



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

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