

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

In the Matter of the Statement of Issues Against:

Case No. 4894

**JAMES ROGERS LEWIS**

OAH No. 2014010204

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 September 10, 2014.

It is so ORDERED on August 11, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STAN C. WEISSER  
Board President

BEFORE THE  
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In the Matter of the Statement of Issues  
Against:

JAMES ROGERS LEWIS,

Respondent.

Case No. 4894

OAH No. 2014010204

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on June 10, 2014, in Oakland, California.

Deputy Attorney General Justin R. Surber represented complainant Virginia Herold, Executive Director, Board of Pharmacy, Department of Consumer Affairs.

Respondent James Rogers Lewis was self-represented.

The matter was submitted on June 10, 2014.

**FACTUAL FINDINGS**

1. On January 3, 2013, respondent James Rogers Lewis signed and then submitted to the Board of Pharmacy, Department of Consumer Affairs (Board), a pharmacy technician application. The Board denied the application on May 16, 2013. Respondent appealed, and complainant Virginia Herold, acting in her capacity as Executive Director of the Board, issued a statement of issues. The statement of issues alleges that respondent has been convicted of a crime substantially related to the qualification, functions or duties of a pharmacy technician, that he did not disclose the conviction on his application, and that in 1990 he possessed crack cocaine for sale. This hearing followed.

2. Question 5 on the pharmacy technician application asks, "Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country?" Respondent answered, "No." By signing the application, respondent certified under penalty of perjury "to the truth and accuracy of all statements, answers and representations made in this application." Respondent's answer to Question 5 was false, as respondent has been convicted of the crime set forth in Findings 3 and 4, below.

3. On January 5, 2009, in the Superior Court of California, County of Alameda, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 2800.1, subdivision (a) (flight from pursuing peace officer), a misdemeanor. Respondent was sentenced to serve 31 days in electronic home detention, and placed on court probation for three years subject to terms and conditions which included the payment of fines and fees.

4. The facts and circumstances leading to this conviction are that, on April 4, 2008, at about 10:00 a.m., respondent was driving his vehicle in the City of Richmond. A Richmond police officer on patrol noticed that respondent's rear passenger window was broken, and pulled in behind respondent's vehicle to run a records check to see if the vehicle was stolen. As the officer followed respondent, respondent failed to stop at a stop sign. The officer activated the red lights and siren on the patrol vehicle. Respondent refused to pull over. He continued driving and ran through five stop signs before he abruptly stopped, got out of his vehicle and started to run. As he ran, respondent reached into his waistband and pulled out a grey object and threw it away. The object turned out to be an electronic scale. Respondent was ultimately apprehended with the assistance of additional officers. When asked why he did not stop, respondent told the officer that he "thought he had a warrant" and that his driver's license was suspended.

5. In an undated letter that respondent sent to Lori Martinez at the Board sometime after April 23, 2013, respondent informed the Board that on October 12, 1990, he possessed crack cocaine for sale.<sup>1</sup>

*Respondent's evidence*

6. Respondent is 48 years old. He has three children.

7. Respondent left high school in the 12th grade, and then earned a GED in 1991. He worked for a Berkeley company from 1991 to 2001, starting as a janitor and working his way up to the position of shipping and receiving supervisor. After that, respondent worked as a loan processor for different employers and for a Berkeley company that sells dive suits. Respondent was unemployed for a period of time; during that time, he took care of his wife's grandmother. (Respondent is no longer married.) Since 2013, respondent has worked full time for Hartmann Studies, a furniture rental company, where he leads the load team and is training to be a supervisor. In a letter dated June 9, 2014, Javelin Hall, the load team manager, writes that respondent has "displayed exemplary leadership while maintain[ing] a humble attitude . . . ." Hall praises respondent for his attendance and work ethic, as well as his professionalism and good character. In addition to his work at Hartmann, respondent works part-time as a security guard.

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<sup>1</sup> Cocaine base ("crack cocaine" is a cocaine base) is a schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (f)(1).

8. In 2010, respondent enrolled in Heald College. In July 2012, he received an Associate in Applied Science degree in Pharmacy Technology. Respondent completed the program with a 3.4 grade point average and, in the April 2012 quarter, respondent received the Director's Award for outstanding academic performance after earning a 4.0 GPA. Respondent has incurred approximately \$40,000 in debt for his Heald College education. Respondent is passionate about working as a pharmacy technician, which he believes will offer him the opportunity for a stable career.

9. Respondent candidly acknowledges that, for a couple of years after he dropped out of high school, he sold crack cocaine. He testified that he had no money, his family was struggling, and he made bad choices. Respondent stated that there was a lot of drug activity in Richmond and he got caught up in it. Respondent denies that he ever used crack cocaine himself. He believes that he was required by the courts to take drug and alcohol classes on two different occasions, both prior to 1995. Respondent testified that he complied with all court requirements, and that he has not sold drugs since his arrest in 1990.

10. In his letter to Martinez, respondent wrote that he fled from Richmond police officers in 2008 because they were "coming at [him] in a way that [he] had never seen before"; he did not stop because he was afraid that he would be arrested and beaten. This explanation is not consistent with the explanation he gave the police officer at the time of his arrest. At hearing, respondent testified that he realizes that trying to evade the police was a serious mistake he will not make again; he adds, however, that he does not think the conviction is relevant to the work of a pharmacy technician. Respondent has not had any contact with law enforcement since 2008.

11. Respondent testified that the electronic scale he threw away while being pursued by peace officers was to weigh food, not drugs. In light of respondent's determined flight and his effort to get rid of the scale before he was apprehended, his testimony on this point was not credible.

12. In his letter to Martinez, respondent wrote that he did not disclose his 2009 conviction on his application to the Board because he "wasn't sure that it was needed"; he wrote that he had been told by a teacher that only felony convictions needed to be disclosed. At hearing, respondent testified that he did not pay attention to the whole question on the application. He acknowledged that, when he filled out the application, he knew he had been convicted of a misdemeanor. Respondent stated that he had no intention not to disclose the conviction. He feels that failing to disclose the conviction was an honest mistake.

Insofar as respondent seeks to offer an innocent explanation for failing to disclose his conviction, his explanations are not convincing. Question 5 on the application is short and clear. Respondent could not have misunderstood it and, as the question sought information that might negatively affect his application, it is not likely that respondent failed to pay attention to it. Moreover, when he signed the application, respondent certified to the Board under penalty of perjury that his answers on the application were true.

13. Respondent has recently sought financial and employment counseling from Rubicon Programs, a nonprofit agency that helps very low-income people achieve financial independence. In a letter dated June 5, 2014, Financial Coach Porschea Brown, MSW, writes that respondent has “taken the initiative to work with his career coach. He is tak[ing] advantage of all the resources that Rubicon Programs offers and he has been actively engaged with the programs.” Brown goes on to write that respondent is “taking positive steps to address his past mistakes. His engagement with the program is evident that [*sic*] he is willing to work hard to move forward. He has demonstrated commitment and sincerity in his efforts to develop a healthy life for him and his family.”

## LEGAL CONCLUSIONS

1. The Board may deny an application for a pharmacy technician license if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, § 480, subs. (a)(1) & (a)(3)(B).) A conviction is substantially related “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.” (Cal. Code Regs., tit. 16, § 1770.) Respondent’s conviction of a violation of Vehicle Code section 2800.1, subdivision (a), is substantially related to the qualifications, functions or duties of a pharmacy technician because it demonstrates a disregard for the health and safety of others, and because it evidences a refusal to comply with lawful authority. Cause exists to deny respondent’s application for a pharmacy technician license by reason of the matters set forth in Findings 3 and 4.

2. The Board may deny an application for a pharmacy technician license if the applicant “knowingly made a false statement of fact required to be revealed in the application” for licensure. (Bus. & Prof. Code, § 480, subd. (c).) Cause exists to deny respondent’s application by reason of the matters set forth in Findings 2, 3 and 12.

3. The Board may deny an application for a pharmacy technician license if the applicant has done any act that would be cause for discipline against a licensee. (Bus. & Prof. Code, § 480, subd. (a)(3)(A).) A pharmacy technician may be disciplined if he violates any law of the state regulating controlled substances or dangerous drugs. (Bus. & Prof. Code, § 4301, subd. (j).) It is a violation of California law for any person to possess a controlled substance without a valid prescription (Bus. & Prof. Code, § 4060), and for any person to possess cocaine base for sale (Health & Saf. Code, § 11351.5). Cause exists to deny respondent’s application by reason of the matters set forth in Findings 5 and 9.

4. Respondent has the burden of proving that he is sufficiently rehabilitated so that it would not be contrary to the public interest to grant his application for a pharmacy technician license. Evidence of rehabilitation must be measured against the severity of the misconduct; the more serious the misconduct, the stronger the showing of rehabilitation must be. Misconduct related to controlled substances is a particularly serious matter for

prospective pharmacy technicians, who have access to those drugs and are trusted to safeguard their legal use. A strong showing of rehabilitation is required in this case.

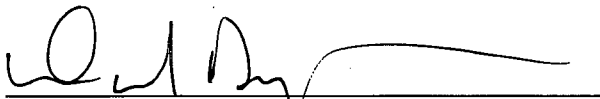
Without question, there is evidence of rehabilitation. It has been 25 years since respondent sold crack cocaine; he has not had any contact with law enforcement since his last arrest in 2008; he has sought financial and career counseling assistance through the Rubicon Program and has actively participated in that program; he has been continuously employed for the past year with an employer who commends him for his work ethic; and respondent excelled academically in the coursework for his A.A.S. degree, a program he pursued at great financial cost to himself. All of this is to respondent's credit.

Other matters, however, detract from the strength of respondent's rehabilitation. In 2008, respondent fled from police officers while carrying an electronic scale, and his testimony at hearing about why he had that scale was not credible. On his 2013 application for licensure, respondent falsely stated that he had not been convicted of a crime, and respondent's testimony at hearing about why he failed to disclose that conviction was not credible. These are important matters that bear directly upon respondent's trustworthiness as a licensee. Respondent is commended for the rehabilitative efforts he has made to date. At this time, however, the evidence fails to establish that it would be consistent with the public interest to grant respondent a pharmacy technician license, even on a probationary basis.

#### ORDER

The application of respondent James Rogers Lewis for a pharmacy technician license is denied.

DATED: July 9, 2014

  
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DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

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

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

Case No. 4894

12 **JAMES ROGERS LEWIS**

**STATEMENT OF ISSUES**

13 **Applicant for a Pharmacy Technician**  
14 **License**

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 2. On or about January 6, 2013, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Pharmacy Technician license from James Rogers Lewis  
23 (Respondent). On or about January 3, 2013, James Rogers Lewis certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on May 16, 2013.

26 JURISDICTION

27 3. This Statement of Issues is brought before the Board of Pharmacy (Board),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.<sup>3</sup> California  
2 Code of Regulations, title 16, section 1770, states:

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

9 4. Section 480 of the Code states:

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

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

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

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

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

25 "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
26 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
27 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
28 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has



1 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
2 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
3 Section 482.

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

7 5. Section 4301 of the Code states:

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

11 . . .

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

14 6. Section 4060 of the Code states:

15 "No person shall possess any controlled substance, except that furnished to a person upon  
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
18 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
19 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
20 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the  
21 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
22 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-  
23 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
24 with the name and address of the supplier or producer. . ."

25 7. Health and Safety Code section 11351.5 states:

26 "Except as otherwise provided in this division, every person who possesses for sale or  
27 purchases for purposes of sale cocaine base which is specified in paragraph (1) of subdivision (f)

28

1 of Section 11054, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170  
2 of the Penal Code for a period of three, four, or five years.”

3 DRUGS INVOLVED

4 8. Cocaine base (“crack cocaine” is a cocaine base) is a schedule I controlled substance  
5 under health and Safety Code section 11054(f)(1).

6 FIRST CAUSE FOR DENIAL OF APPLICATION

7 (Convictions )

8 9. Respondent's application is subject to denial under section 480 of the Code in that  
9 Respondent was convicted of a crime that is substantially related to the duties, functions, or  
10 qualifications of a pharmacy technician. On or about January 5, 2009, in Contra Costa Superior  
11 Court Case No. 299081-0, Respondent was convicted of violating Vehicle Code section  
12 2800.1(a), evading a peace officer. On or about April 4, 2008, Respondent willfully evaded a  
13 police officer.

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Failure to Disclose Convictions)

16 10. Respondent's application is subject to denial under 480(c) of the code in that  
17 Respondent knowingly made a false statement of fact required to be revealed on his application.  
18 Respondent failed to disclose the conviction mentioned in paragraph 9.

19 THIRD CAUSE FOR DENIAL OF APPLICATION

20 (Illegal Possession of Crack for Sale)

21 11. Respondent's application is subject to denial under 480(c) of the code in conjunction  
22 with code sections 4301(j), 4060 and Health and Safety Code section 11351.5, in that on or about  
23 October 12, 1990, Respondent possessed crack cocaine for sale, an act that if done by a pharmacy  
24 technician, would be grounds for suspension or revocation of his or her license.

25 PRAYER

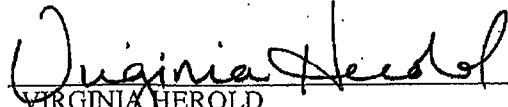
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Denying the application of James Rogers Lewis for a Pharmacy Technician License;

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

DATED: 12/12/13



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

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