

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

In the Matter of the Statement of Issues  
Against:

ALEX DEMOYE HOWARD

Pharmacy Technician Registration Applicant

Respondent.

Case No. 5871

OAH No. 2016110208

**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 at 5:00 p.m. on April 20, 2017.

It is so ORDERED on March 21, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 26, 2017.

Deputy Attorney General Shannon M. Brubaker represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent, Alex Demoye Howard, represented himself.

The matter was submitted on January 26, 2017.

**FACTUAL FINDINGS**

1. On November 2, 2015, respondent submitted to the board an application for a Pharmacy Technician Registration. Respondent had signed the application more than 60 days prior to submission to the board so respondent was directed to submit a more recently completed application. On December 31, 2015, respondent submitted a second application.

2. On May 20, 2016, the board notified respondent that his application(s) had been denied "pursuant but not limited to, sections 480(a)(1), 480 (a)(2), 480 (a)(3), and 480 (d) of the Business and Professions Code. This denial is based upon your criminal history . . . ." (Exh. 13, AGO-069)

3. On September 16, 2016, complainant, while acting in her official capacity as the Executive Officer for the board, filed a statement of issues against respondent. Respondent timely requested a hearing and the instant hearing ensued.

*Respondent's Applications*

4. In respondent's initial application, signed on May 24, 2015, and submitted to the board on November 2, 2015, respondent, in response to question 7, checked the "yes" box indicating that he had the following criminal history: on August 15, 2010, he had been arrested for two counts of "offensive/loud noise" and was convicted of those offenses on March 11, 2011; and on December 17, 2008, he had been arrested for "take property from person" and was convicted of that offense on November 2, 2009. (Exh. 3)

5. In respondent's second application, signed and submitted to the board on December 31, 2015, respondent, in response to question 7, checked the "no" box indicating he had no criminal convictions; however, he disclosed the following arrests: an August 15, 2010, arrest for "242 PC, 23110 VC, 417 (A)(2) PC, [and] 1203.2 PC"; a December 17, 2008, arrest for "211 PC"; and a November 20, 2008, arrest for "Bench Warrant." (Exh. 4)

6. On January 27, 2016, the board received a letter from respondent explaining his convictions. On January 29, 2016, the board received a second letter from respondent explaining his convictions. Both letters were substantially the same and informed the board of the following:

On 12-02-08 I was convicted of a 459 PC-Burglary, which took place in Palm Springs, Ca. My Self [sic] and a friend of mine made a bad choice of entering a home with out [sic] permission when no one was home. I was later arrested, had to sit in jail and pay fine's [sic]. I had this case expunged.

On 10-22-09 I was convicted of grand theft from a person (PC 487c). I was sitting at home in Palm Springs, Ca one day watching TV. I get a knock at the door, it's some random woman asking me if I seen [sic] anyone run through my yard. I told her that I had not. She said OK then left. An hour later I get another knock at the door, it's Palm Springs police department. They question me then arrested me. I was put in jail and had to pay fines for something I did not do.

03-07-2011 I was convicted of PC 415 Fight/Noise/Offensive words. My family and I were sitting in my front yard. A car pulled up with a female yelling and screaming. She wanted to fight my sister. She jumped out of her ride [sic] and said hey let's fight. They began fighting. After they were done they

were still arguing with each other. The females [sic] family came and made her leave. [The] [n]ext thing I know the Palm Springs Police Department pull up [and] question me, my brothers and sister and arrest us all.

All of my arresst [sic] took place in Palm Springs Ca. All of my court cases were held at the Indio courthouse in Indio, Ca.

Since then I have had these cases expunged. (Exh. 5)

### *Respondent's Criminal Convictions*

#### December 2, 2008, First Degree Burglary Conviction

7. On November 20, 2008, respondent was arrested by the Palm Springs Police on "a felony warrant for PC 459 [burglary]." (Exh. 7)

8. On December 2, 2008, respondent was convicted of violating Penal Code section 459 (first degree burglary), a felony. As a result of his conviction respondent was placed on probation for 36 months and ordered to serve six months in jail.

#### October 22, 2009, Grand Theft From Person Conviction

9. On December 17, 2008, only 15 days after respondent was placed on criminal probation as a result of his December 2, 2008, conviction, respondent was arrested for grabbing approximately \$200 from a woman who was walking "north bound on Granada Ave just south of Palm Vista Drive." The victim of the theft identified respondent as the perpetrator. Respondent denied stealing the money; however, he was charged with violating Penal Code section 211 (robbery), a felony, and for violating his December 2, 2008, probation. Respondent entered into a plea bargain with the District Attorney's Office and pled guilty to a misdemeanor violation of Penal Code section 487, subdivision (c) (grand theft from person). The felony charge and the probation violation allegation were dismissed. Probation was denied and respondent was ordered to serve nine days in jail and to pay fines.

#### March 7, 2011, Fight/Noise/Offensive Words Conviction

10. On August 15, 2010, respondent was arrested for violating Penal Code section 242 (battery with serious bodily injury), Vehicle Code section 23110, subdivision (b) (throwing objects at a motor vehicle with the intent to inflict great bodily injury), Penal Code section 417, subdivision (a)(2) (exhibit firearm), and Penal Code section 1203.2 (probation violation).

11. On March 7, 2011, respondent pled guilty to having violated Penal Code section 415 (fight/noise/offensive words), an infraction. As a result of the conviction respondent was ordered to pay fines and penalties.

*Factors Related to Mitigation and Rehabilitation*

12. Respondent made a good faith effort to disclose all of his convictions in his applications.

13. Respondent's last misdemeanor conviction occurred on October 22, 2009, for conduct that occurred on December 17, 2008, over eight years ago.

14. Respondent successfully completed his criminal probation(s) in 2011 and has had his convictions expunged pursuant to Penal Code section 1203.4.

Respondent's Testimony

15. Respondent testified that he has moved from the place where he lived when his convictions occurred and has disassociated with the people with whom he associated at the time of his convictions.

16. Respondent explained his convictions as set forth in Findings 17, 18 and 19, below.

**The December 2, 2008, Burglary Conviction:**

17. Respondent admitted that in 2007 when he was 19 years old, he and a friend made a "bad decision" to break a window in a residential house and enter the house to "take something." As they were going through the window respondent cut himself on the glass and his blood was left at the scene of the residential burglary. Respondent's friend "took something" but respondent did not. Sometime later, respondent was shot by a local gang member. Eventually, respondent's blood from the shooting was matched to the blood respondent left at the scene of the residential burglary and respondent was arrested and later convicted of violating Penal Code section 459, a felony.

**The October 22, 2009, Grand Theft Conviction:**

18. Respondent testified that on December 17, 2011, he was sitting at home when a woman knocked on his door and asked him if he had seen anyone run by his house. Respondent said, "no," and the woman left. Later, the police came and arrested respondent. The woman later identified respondent as the person who grabbed over \$200 from her and ran away. Respondent believes that the incident was a "set up" by a local gang because he had testified against a gang member in a case where he was the victim of a gang shooting. Respondent denied being a member of any gang.

### **March 7, 2011, Fight/Noise/Offensive Words Conviction:**

19. On August 15, 2010, respondent's sister was involved in a fight with another woman. The police arrived at the scene and arrested respondent and his siblings. Ultimately, respondent was allowed to plead guilty to an infraction.

#### *Substantial Relationship*

20. A Pharmacy Board Compliance Unit Inspector reviewed the documents and reports concerning respondent's criminal convictions and testified that the convictions were for acts/crimes that are substantially related to the qualifications, functions and duties of a pharmacy technician because the crimes involved moral turpitude and pharmacy technicians must be honest and of good character because they are privy to customers' "private, personal, and financial information" and they handle controlled substances. Private information could be sold to others or used by a pharmacy technician for illegal purposes and, a pharmacy technician could divert drugs and sell the drugs on the street.

#### *Character Reference Letters*

21. Respondent presented two letters that appear to have been written as employment recommendation letters. One letter was written by the shipping and receiving supervisor at Masterbrand where respondent works as a "logistics employee." In pertinent part the letter stated that respondent is a "key employee," "pays attention to detail," is punctual and has a positive attitude and great work ethic. The other letter was written by a former employer, Kim Tran, the Pharmacy Manager for whom respondent worked as a pharmacy technician intern. Mr. Tran stated that respondent was "respectful and reliable in terms of attendance," "he did whatever the pharmacy needs of him," and "he took direction well and had a positive attitude." Neither letter addressed respondent's criminal convictions and neither letter addressed respondent's character for truthfulness and honesty.

#### *Alleged "Disciplinary Considerations"*

22. The statement of issues alleges the facts and circumstances underlying respondent's March 7, 2011, Penal Code section 415 conviction and the facts concerning another incident as "disciplinary considerations." The only evidence in support of the "disciplinary considerations" was contained in police/investigation reports. The reports were received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered what kinds of hearsay evidence are admissible under the Government Code section 11513 in an administrative proceeding. That opinion concluded that a law enforcement officer's direct observations memorialized in the officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The opinion concluded that admissions by a party memorialized in such a report were also admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded that

other hearsay statements set forth in the officer's report could be used to supplement or explain other evidence, but that they were not sufficient by themselves to support a factual finding unless – as with the public employees records exception to the hearsay rule and the party admission exception to the hearsay rule – such hearsay would be admissible over objection in civil actions. The “facts” underlying the alleged “disciplinary considerations” came from witness statements, not the direct observations of the investigators; therefore, the statements were not sufficient, in and of themselves, to support a factual finding; thus, the statements were not considered by the Administrative Law Judge.

## LEGAL CONCLUSIONS

1. Cause for denial of respondent's application(s) exist(s) pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A), based on respondent's December 2, 2008, conviction for first degree burglary, a crime substantially related to the qualifications, functions and duties of a pharmacy technician involving act(s) that would be grounds for suspension or revocation of a pharmacy technician's registration.

2. Cause for denial of respondent's application(s) exist(s) pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A), based on respondent's October 22, 2009, conviction for grand theft, a crime substantially related to the qualifications, functions and duties of a pharmacy technician involving act(s) that would be grounds for suspension or revocation of a pharmacy technician's registration.

3. Cause for denial of respondent's application(s) exist(s) pursuant to Business and Professions Code section 480, subdivisions (a)(2) and (a)(3)(A), based on respondent's December 2, 2008, and October 22, 2009, convictions for acts involving dishonesty, moral turpitude, deceit, and/or corruption with the intent to substantially benefit himself and for having committed acts that would be grounds for suspension or revocation of a pharmacy technician's registration.

4. In administrative disciplinary proceedings, a licensee (or an individual seeking a license) may not seek to impeach a prior criminal conviction by means of an “an inquiry into the circumstances surrounding the offense.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) However, “the licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation” (*ibid.*). Accordingly, respondent's testimony concerning his convictions was considered for mitigation purposes. Additionally, the relatively light sentences imposed by the criminal court indicated that there were either proof problems connected with respondent's prosecutions, or, based on the facts of the offenses, the court did not consider the acts to have been particularly egregious.

5. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he is qualified to hold the license. The standard of proof is a

preponderance of the evidence. (*California Administrative Hearing Practice* (Cont.Ed.Bar (2d ed. 1997) The Hearing Process, §§ 7.51-7.53, pp. 365-367).) Therefore, in the present case it was incumbent upon respondent to prove that he has been rehabilitated to the point where allowing him to work as a pharmacy technician would not pose a threat to the public health, safety and/or welfare.

6. The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) As Chief Justice Lucas observed, "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar, supra.*, at 1070.)

7. The board has established guidelines for assessing rehabilitation in California Code of Regulations, title 16, section 1769. Pursuant to section 1769, the following criteria are to be used:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Business and Professions Code section 480.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence of rehabilitation submitted by respondent.

#### *Evaluation*

8. Residential burglary and grand theft are serious crimes. It has been approximately eight years since respondent's most recent conviction for misdemeanor grand theft. During that time, respondent has committed two infractions. Respondent has complied with all of the terms and conditions of his criminal probation(s) and has had his convictions expunged pursuant to Penal Code section 1203.4. Respondent has moved and changed his friends and acquaintances since his last criminal conviction. However, respondent failed to present any witnesses to attest to his rehabilitation and to the fact that he has gained a reputation in the community for honesty and integrity. Respondent is well on his way toward rehabilitation, and may already be there, but he fell short in establishing at the hearing, by a preponderance of the evidence, that he is currently of such good character that his application should be accepted.



ORDER

The board's denial of respondent's application for a pharmacy technician registration is upheld. Respondent's application is denied.

Dated: February 22, 2017.

DocuSigned by:

Roy Hewitt

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues Against:  
12 **ALEX DEMOYE HOWARD**  
13 **Pharmacy Technician Registration Applicant**  
14 Respondent.

Case No. 5871

**STATEMENT OF ISSUES**

15  
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about November 2, 2015, the Board received an application for a Pharmacy  
22 Technician Registration from Alex Demoye Howard (Respondent). On or about May 24, 2015,  
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. Because the application was signed more than 60 days prior to  
25 its receipt by the Board, Respondent was directed to re-submit his application. In his second  
26 application dated December 31, 2015, Respondent certified under penalty of perjury to the  
27 truthfulness of all statements, answers, and representations in the application. The Board denied  
28 the application on May 20, 2016.

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 (Code) unless  
4 otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.  
7 The board may, in its sole discretion, issue a probationary license to any applicant for a  
8 license who is guilty of unprofessional conduct and who has met all other requirements  
9 for licensure. . . .

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

11 (a) Notwithstanding any other provisions of this code, the provisions of this  
12 division shall govern the denial of licenses on the grounds of:

13 (1) Knowingly making a false statement of material fact, or knowingly omitting  
14 to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the intent  
17 to substantially benefit himself or another, or substantially injure another.

18 (4) Commission of any act which, if done by a licentiate of the business or  
19 profession in question, would be grounds for suspension or revocation of license.

20 (b) Notwithstanding any other provisions of this code, the provisions of this  
21 division shall govern the suspension and revocation of licenses on grounds specified in  
22 paragraphs (1) and (2) of subdivision (a) .

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of  
24 good moral character or any similar ground relating to an applicant's character,  
25 reputation, personality, or habits.

26 6. Section 477 of the Code states:

27 As used in this division:

28 (a) "Board" includes "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a  
business or profession regulated by this code.

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1           7.       Section 480 of the Code states:

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

4                           (1) Been convicted of a crime. A conviction within the meaning of this section  
5                           means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any  
6                           action that a board is permitted to take following the establishment of a conviction may be  
7                           taken when the time for appeal has elapsed, or the judgment of conviction has been  
8                           affirmed on appeal, or when an order granting probation is made suspending the  
9                           imposition of sentence, irrespective of a subsequent order under the provisions of Section  
10                           1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

18                           (b) Notwithstanding any other provision of this code, a person shall not be denied a  
19                           license solely on the basis that he or she has been convicted of a felony if he or she has  
20                           obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section  
21                           4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a  
22                           misdemeanor if he or she has met all applicable requirements of the criteria of  
23                           rehabilitation developed by the board to evaluate the rehabilitation of a person when  
24                           considering the denial of a license under subdivision (a) of Section 482.

25                           (c) Notwithstanding any other provisions of this code, a person shall not be denied a  
26                           license solely on the basis of a conviction that has been dismissed pursuant to Section  
27                           1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that  
28                           has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code  
                         shall provide proof of the dismissal.

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

22           8.       Section 482 of the Code states:

23                   Each board under the provisions of this code shall develop criteria to evaluate the  
24                   rehabilitation of a person when:

25                           (a) Considering the denial of a license by the board under Section 480; or

26                           (b) Considering suspension or revocation of a license under Section 490.

27                   Each board shall take into account all competent evidence of rehabilitation furnished  
28                   by the applicant or licensee.

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1           9.    Section 493 of the Code states:

2                    Notwithstanding any other provision of law, in a proceeding conducted by a board  
3                    within the department pursuant to law to deny an application for a license or to suspend  
4                    or revoke a license or otherwise take disciplinary action against a person who holds a  
5                    license, upon the ground that the applicant or the licensee has been convicted of a crime  
6                    substantially related to the qualifications, functions, and duties of the licensee in question,  
7                    the record of conviction of the crime shall be conclusive evidence of the fact that the  
8                    conviction occurred, but only of that fact, and the board may inquire into the  
9                    circumstances surrounding the commission of the crime in order to fix the degree of  
10                   discipline or to determine if the conviction is substantially related to the qualifications,  
11                   functions, and duties of the licensee in question.

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

14           10.   Section 4301 of the Code states:

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

19                    ...  
20                    (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,  
21                    or corruption, whether the act is committed in the course of relations as a licensee or  
22                    otherwise, and whether the act is a felony or misdemeanor or not.

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

42            ///  
43            ///  
44            ///

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1769 states:

3 (a) When considering the denial of a facility or personal license under Section 480  
4 of the Business and Professions Code, the board, in evaluating the rehabilitation of the  
5 applicant and his present eligibility for licensing or registration, will consider the following  
6 criteria:

7 (1) The nature and severity of the act(s) or offense(s) under consideration as  
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
10 consideration as grounds for denial under Section 480 of the Business and Professions  
11 Code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s) referred to  
13 in subdivision (1) or (2).

14 (4) Whether the applicant has complied with any terms of parole, probation,  
15 restitution or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

17 12. 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  
20 Code, a crime or act shall be considered substantially related to the qualifications,  
21 functions or duties of a licensee or registrant if to a substantial degree it evidences present  
22 or potential unfitness of a licensee or registrant to perform the  
23 functions authorized by his license or registration in a manner consistent with the  
24 public health, safety, or welfare.

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 **(December 2, 2008 Criminal Conviction for First Degree Burglary)**

27 13. Respondent's application for registration as a pharmacy technician is subject to denial  
28 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a  
crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
for a registered pharmacy technician. The circumstances are as follows:

a. On or about November 20, 2008, after failing to appear at his felony  
arraignment, Respondent was arrested by the Palm Springs Police Department on \$25,000 bench  
warrant issued by the court.

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1           b.    On or about December 2, 2008, in a criminal proceeding entitled *People of the*  
2 *State of California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
3 INF063819, Respondent was convicted of violating Penal Code section 459, first degree burglary,  
4 a felony.

5           c.    As a result of the conviction, Respondent was sentenced to serve six months in  
6 jail, and was granted probation for 36 months. On May 21, 2013, the court reduced the conviction  
7 to a misdemeanor. Respondent was permitted to withdraw his plea of guilty, enter a plea of not  
8 guilty, and the conviction was dismissed under Penal Code section 1203.4.

9                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

10                               **(October 22, 2009 Criminal Conviction for Grand Theft on December 17, 2008)**

11           14.   Respondent's application for registration as a pharmacy technician is subject to denial  
12 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a  
13 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
14 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
15 for a registered pharmacy technician. The circumstances are as follows:

16           a.    On or about October 22, 2009, in a criminal proceeding entitled *People of the*  
17 *State of California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
18 INF064440, Respondent was convicted on his plea of guilty of violating Penal Code section 487,  
19 subdivision (c), grand theft of property from another person, a felony reduced to a misdemeanor  
20 under Penal Code section 17, subdivision (b).

21           b.    As a result of the conviction, Respondent was sentenced to serve nine days in  
22 the Riverside County Jail, with pre-custody credit for nine days. On May 21, 2013, the court  
23 permitted Respondent to withdraw his plea of guilty, enter a plea of not guilty, and the conviction  
24 was dismissed under Penal Code section 1203.4.

25           c.    The facts that led to the conviction are that on or about noon on December 17,  
26 2008, Respondent approached a woman and asked her if she wanted to buy some "weed." After  
27 she declined the offer, Respondent asked the woman for \$1.00 for bus fare. As the woman was  
28 attempting to give Respondent a dollar, he grabbed all the money from her hand (\$200.00) and ran

1 away. The victim ran after Respondent and saw him run towards a residence. The victim knocked  
2 on the door and asked the male who answered if he knew anything about the robbery. He told her  
3 he did not. The victim then called the Palm Springs Police Department who went to Respondent's  
4 residence. Respondent's clothing was an exact match of the description provided by the victim.  
5 She was able to pick his photo in a photo line-up, and she positively identified Respondent as the  
6 person who robbed her in an infield show-up. Respondent was arrested for robbery.

### 7 THIRD CAUSE FOR DENIAL OF APPLICATION

#### 8 (Commission of Acts Involving Dishonesty, Moral Turpitude, Deceit and/or Corruption)

9 15. Respondent's application for registration as a pharmacy technician is subject to denial  
10 under sections 480, subdivisions (a)(2) and (a)(3)(A) of the Code for unprofessional conduct in  
11 that on or about December 2, 2008 and October 22, 2009, Respondent was convicted of criminal  
12 acts that involve dishonesty, moral turpitude, deceit, and/or corruption with the intent to  
13 substantially benefit himself, as detailed in paragraphs 13 and 14, above. Said conduct would be a  
14 cause for discipline under Business and Professions Code section 4301, subdivision (f) of the Code  
15 for a licensed Registered Dental Assistant.

### 16 **DISCIPLINARY CONSIDERATIONS**

17 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
18 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

19 a. On or about the morning of August 15, 2010, the Palm Springs Police  
20 Department was called to respond to a disturbance. After investigating the matter and speaking to  
21 witnesses, officers learned that Respondent was part of a group of people who threw rocks, golf  
22 clubs, and metal objects at a passing vehicle. The victim driver stated her vehicle stalled  
23 temporarily, which was when she was assaulted by one of the group's members. The victim was  
24 familiar with the suspects because they lived in the neighborhood, and she had had confrontations  
25 with Respondent and his family members in the past. Respondent was later arrested.

26 b. On March 7, 2011, in a criminal proceeding entitled *People of the State of*  
27 *California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
28 INM10005480, Respondent pled guilty to Penal Code section 415, offensive/loud noise, an



1 infraction added to the complaint by oral amendment. The original charge of throwing any  
2 substance at a vehicle or any occupant (Veh. Code, § 23110(a)) was dismissed.

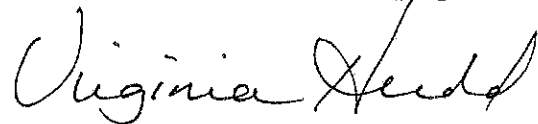
3 c. On the evening of September 12, 2011, a patrol officer with the Palm Springs  
4 Police Department responded to a report of shots fired. The officer went to the residence of one  
5 of the juvenile victims. The victim stated that he was hanging out at his friend's house which was  
6 down the street from where Respondent lived with his family. According to the victim and  
7 witnesses, prior to the shooting, Respondent and his family members arrived at the friend's house  
8 and tried to engage the juveniles in a fight. When the victim and his friends left the residence later,  
9 Respondent and his brother threw rocks at the juveniles. Respondent ran into the street, fired one  
10 shot into the air, and then fired an unknown number of bullets towards the juveniles, who fled the  
11 scene unharmed. Respondent was driven away from the scene by a family member. Investigators  
12 found a shell casing on the ground next to the garage, which matched a WIN 9mm Luger shell  
13 casing found in Respondent's driveway. Respondent was arrested for assault with a deadly  
14 weapon, however, no formal charges were filed.

15 **PRAYER**

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

- 18 1. Denying the application of Alex Demoye Howard for a Pharmacy Technician  
19 Registration;  
20 2. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: 9/16/16



23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 *Complainant*

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