

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

In the Matter of the Statement of Issues Against:

TALIKA NIKKEL MALIKA COBBS,

Pharmacy Technician Registration Applicant

Respondent.

Case No. 6082

OAH No. 2017070288

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 December 6, 2017.

It is so ORDERED on November 6, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Joy Redmon, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 11, 2017, in Sacramento, California.

Stephanie Alamo-Latif, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Talika Nikkel Malika Cobbs (respondent) was present and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 11, 2017.

FACTUAL FINDINGS

1. On May 16, 2016, the Board received an application for a Pharmacy Technician Registration (application) from respondent.

2. On January 27, 2017, the Board denied respondent's Application based on a conviction for attempting to use a counterfeit access card, and falsification on her license application for failing to disclose the conviction. Respondent timely filed a Notice of Defense. On May 27, 2017, complainant signed the Statement of Issues in her official capacity and this matter was set for an evidentiary hearing.

Respondent's Conviction

3. On August 20, 2014, respondent was convicted in Santa Clara County Superior Court, Case No. B1472822, on a plea of nolo contendere, of violating Penal Code section 484, subdivision (f)(a), uttering or attempting to use a counterfeit access card, a felony. Imposition of sentence was suspended, and respondent was placed on three years formal probation, ordered to serve 60 days in county jail, and pay fees and fines. Respondent completed probation and has paid her fees and fines.

4. The incident underlying this conviction occurred on May 19, 2014. Respondent entered a department store and attempted to purchase an item with a fraudulent credit card that contained scratches and black printed numbers rather than embossed numbers. She had other cards with her name embossed that appeared altered. She was stopped by loss prevention who notified local law enforcement. At the time of her arrest, respondent had 16 altered or fraudulent cards and nine unopened prepaid debit cards in her possession.

Failure to Disclose

5. Respondent checked the box, "no" in response to question 8 on the application. This question asks, "[h]ave you ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state. . ." and goes on to explain which offenses an applicant is required or not required to disclose. Respondent's felony conviction was required to be disclosed. Respondent signed the application confirming, "I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of all statements, answers and representations made in this application, including all supplementary statements. I understand that my application may be denied, or any license disciplined, for fraud or misrepresentation."

Respondent's Evidence

6. Respondent enrolled in and successfully completed 240 hours of instruction to become a pharmacy technician. She testified that she was at the top of her class and believes she will do well in the profession. Regarding her underlying criminal conviction, respondent testified that "a friend" gave her the cards and told her she could use them to buy what she wanted. Respondent explained that she did not know they were fraudulent but believed they were similar to gift cards.

7. Regarding disclosing her criminal conviction, respondent explained it was an error. According to respondent, she did not complete her application but one of her professors completed the application. He then presented it to her to sign. She explained that she did not read the application over before signing it and did not realize it asked a question about criminal convictions.

Discussion

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

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

9. Respondent presented some evidence of rehabilitation. She has not been convicted of any other crimes, and she successfully completed probation and paid her fines. She also successfully completed the course work necessary to receive a pharmacy technician registration.

10. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (a), respondent did not establish that she has engaged in sufficient rehabilitation to receive a pharmacy technician registration. Respondent was convicted of a serious felony in August 2014. The nature of her crime involved fraud and deception. At hearing she did not accept responsibility for her criminal conduct, instead claiming "her friend" essentially gave her gift cards. That explanation is implausible. (See *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation"].) Additionally, respondent failed to disclose her conviction on her application, and certified the truth of the information she provided under penalty of perjury. This conduct, which occurred less than two years after her conviction, demonstrated dishonesty. Rather than acknowledging her conduct, respondent again sought

to place the blame on another. She testified that her professor, who is a pharmacist in another state, completed the application for her, and she did not review it before signing and submitted it. It is not credible that a professor would complete applications on behalf of students without asking them to verify information that he would otherwise not possess; such as their criminal conviction status. Respondent's testimony was not credible.

11. The Board and the public expect a pharmacy technician to act with good judgment, responsibility, honesty, and integrity. Respondent's conviction and her failure to disclose the conviction on her application establish that it would be inconsistent with the public health, safety, and welfare to grant her a pharmacy technician registration at this time. Respondent's application must, therefore, be denied.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a)(1), a license application may be denied when the applicant has been "convicted of a crime" that is substantially related to the qualifications, functions or duties of the business or profession for which application was made.¹ "The Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made." (Bus. & Prof. Code 480, subd. (3)(B).)

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

3. In California Code of Regulations, title 16, section 1770, the Board has stated that a crime will be "considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

4. Respondent's felony conviction for using a counterfeit access card is substantially related to the qualifications, functions and duties of a pharmacy technician in that it evinces respondent's present or potential unfitness to perform the functions of a

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

pharmacy technician in a manner consistent with the public health, safety, or welfare. As set forth in Factual Findings 3 and 4, respondent's conviction establishes cause to deny her application under Business and Professions Code sections 480, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 1770.

5. Pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), an application is subject to denial if the applicant committed acts which would have subjected a licentiate performing similar acts to discipline. Business and Professions Code section 4301 authorizes the Board to discipline a licentiate for the following:

[¶] . . . [¶]

(f) The commission of any act involving moral turpitude, dishonestly, fraud, deceit, or corruption. . . .

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state of federal regulatory agency. . . .

6. Cause was established to deny respondent's application based on Business and Professions Code section 480, subdivision (a)(3)(A). Respondent was convicted of a crime that would have subjected her to discipline had it been convicted by a licentiate. (Factual Finding 3, Legal Conclusion 4.) Respondent was convicted of a crime involving dishonesty and fraud. (Factual Findings 3 and 10.) Respondent failed to disclose her conviction on an application that was required through the Board's regulations, to be truthfully and accurately disclosed. (Factual Finding 5.) Each of these acts, if done by a licensee, would have subjected a licensee to discipline for violating Business and Professions Code section 4301, subdivisions (f), (l), and (o).

7. Pursuant to Business and Professions Code section 480, subdivision (d), an application is subject to denial if respondent knowingly makes a false statement of fact required to be revealed in the application. As set forth in Factual Findings 5 and 10,

respondent knowingly failed to disclose her criminal conviction. Therefore, cause was established to deny her application based on Business and Professions Code section 480, subdivision (d).

8. As set forth in Factual Findings 8 through 11, respondent did not establish that she has been sufficiently rehabilitated. Therefore, it would be inconsistent with the public health, safety and welfare to issue her a pharmacy technician registration at this time.

ORDER

The Pharmacy Technician Application submitted by respondent Talika Nikkel Malika Cobbs is DENIED.

DATED: October 5, 2017

DocuSigned by:

Joy Redmon

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues
Against:
12 **TALIKA NIKKEL MALIKA COBBS**
13
14 **Pharmacy Technician License Applicant**
15 Respondent.

Case No. 6082

16 **STATEMENT OF ISSUES**

17
18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

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

22 2. On or about May 16, 2016, the Board received an application for a Pharmacy
23 Technician License from Talika Nikkel Malika Cobbs ("Respondent"). On or about May 5, 2016,
24 Talika Nikkel Malika Cobbs certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on January 27,
26 2017.

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1 **JURISDICTION**

2 3. Pursuant to Business and Professions Code (“Code”) section 485, subdivision (b), on
3 or about January 27, 2017, Respondent’s application was denied and he was notified of the right
4 to a hearing to appeal that denial.

5 4. On or about February 21, 2017, Respondent requested a hearing to appeal the denial
6 of her application.

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states:

9 (a) A board may deny a license regulated by this code on the grounds that
10 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
14 a conviction may be taken when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal, or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4, 1203.4a, or 1203.41 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
17 profession in question, would be grounds for suspension or revocation of license.

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

20 ...

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

23 6. Section 4301 of the Code states:

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

26 (a) Procurement of a license by fraud or misrepresentation.

27 ...

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

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

23 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violation of or conspiring to violate any provision or term of this chapter
25 or of the applicable federal and state laws and regulations governing pharmacy,
26 including regulations established by the board or by any other state or federal
27 regulatory agency. . . .

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(Substantially Related Criminal Conviction)

7. Respondent's application is subject to denial under Code section 480,
subdivision (a)(1), in that on or about August 20, 2014, in a criminal proceeding entitled *People v.*
Talika Nikkelmaliak Cobbs (Santa Clara County Super. Ct., Case No. B1472822), Respondent
was convicted by the court on her plea of nolo contendere to violating Penal Code section 484,
subdivision (f)(a) (uttering or attempting to use a counterfeit access card), a felony. The
imposition of Respondent's sentence was suspended and three (3) years formal probation was
granted. The circumstances are as follows: On or about May 19, 2014, a Palo Alto Police
Department ("PADP") officer responded to a report of a petty theft at a retail department store
where Respondent was being held by the loss prevention office. Respondent attempted to

1 purchase some merchandise with an alleged counterfeit card. The sales associate at the store
2 observed that the card had scratch marks and appeared to have been physically altered in that the
3 account number on the card should be in black printed numbers and not embossed. Sixteen cards
4 were found in Respondent's purse all of which appeared to have been altered and Respondent's
5 name appeared to be embossed on the cards. During the PADP officer's investigation, he found
6 additional merchandise on Respondent from other retailers. It was determined that Respondent
7 made other fraudulent purchases at other retailers. Respondent admitted that she got the cards
8 herself and stated that she "kinda sort of" knew the cards were fraudulent and altered.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Committed Acts which if Done by a Licentiate)**

11 8. Respondent's application is subject to denial under Code section 480,
12 subdivision (a)(3)(A) in that Respondent committed acts that if done by a licentiate would be
13 grounds for discipline, as follows:

14 a. Respondent was convicted of a crime substantially related to the qualifications,
15 functions and duties of a pharmacy technician, as more particularly set forth above in paragraph 7,
16 which is grounds for discipline under Code section 4301, subdivision (d).

17 b. Respondent committed acts involving dishonesty and fraud, as more particularly set
18 forth above in paragraph 7 and below in paragraph 9, which is grounds for discipline under Code
19 section 4301, subdivision (f).

20 c. Respondent violated terms of the Pharmacy Law, as more particularly set forth above
21 in subparagraph a and b of paragraph 8 and below in paragraph 9, which are grounds for discipline
22 under Code section 4301, subdivision (o).

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(Falsification of an Application)**

25 9. Respondent's application is subject to denial under Code section 480, subdivision (d),
26 in that on or about May 5, 2016, Respondent knowingly made a false statement of fact required to
27 be revealed in the application for licensure, in that Respondent answered "No" to question number
28 8 on the application for licensure that stated:

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Have you ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state, the United States or its territories, a military court, or any foreign country? Include any felony or misdemeanor offense, and any infraction involving drugs or alcohol with a fine of \$500 or more. You must disclose a conviction even if it was: (1) later dismissed or expunged pursuant Penal Code section 1203.4 et seq., or an equivalent release from penalties and disabilities provision from a non-California jurisdiction, or (2) later dismissed or expunged pursuant to Penal Code section 1201 et seq., or an equivalent post-conviction drug treatment diversion dismissal provision from a non-California jurisdiction. Failure to answer truthfully and completely may result in the denial of your application. . . .

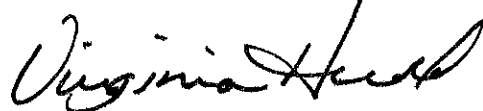
In fact, Respondent was convicted on August 20, 2014, for attempting to use a counterfeit access card, as more particularly set forth above in paragraph 7.

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 Talika Nikkel Malika Cobbs for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/17



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

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