

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

In the Matter of the Accusation Against:

MARC ANTHONY BASALLO
841 Canterbury Lane
San Dimas, CA 91773

Pharmacy Technician License No. TCH 46875,

Respondent.

Case No.: 3259

OAH No.: 2011010125

PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings on July 21, 2011, at Los Angeles, California.

Leslie A. Walden, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence was received and argument was heard.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Virginia Herold, Complainant herein, brought the First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On July 29, 2003, the Board issued Pharmacy Technician License No. TCH 46875 to Marc Anthony Basallo aka Marc Anthony Basillo, Respondent herein. The Pharmacy Technician License is in full force and effect.

Criminal Convictions

3. On December 15, 2007, during a lawful vehicle stop, Respondent was found in possession of two glass methamphetamine smoking pipes and methamphetamine¹ without a valid prescription. Respondent was arrested and subsequently subjected to criminal proceedings. Thereafter, on December 29, 2008, after pleading guilty, being placed on deferred entry of judgment for 18 months, violating the deferred entry of judgment program and being terminated from the deferred entry of judgment program, Respondent was convicted of one felony count of violating Health and Safety Code section 11377, subdivision (a) [possession of controlled substance] in the criminal proceeding entitled *The People of the State of California v. Marc Anthony Basallo* (Super. Ct. Los Angeles County, 2007, No. BA333754).

4. During lawful police investigation, on December 29, 2007, Respondent admitted to being in possession of a smoking device, a small digital scale with another small glass pipe and methamphetamine without a valid prescription. Respondent was arrested and subsequently subjected to criminal proceedings. Thereafter, on April 16, 2009, after pleading guilty, being placed on deferred entry of judgment for 18 months, violating the deferred entry of judgment program and being terminated from the deferred entry of judgment program, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a) [possession of controlled substance] in the criminal proceeding entitled *The People of the State of California v. Marc Basallo* (Super. Ct. Los Angeles County, 2008, No. 8GN03316).

5. On or between January 20, 2009 through April 8, 2009, Respondent willfully and unlawfully obtained personal identifying information of twelve persons and used the persons' credit card information for an on-line shopping spree. When the fraud and deceit were uncovered Respondent was arrested and subjected to criminal proceedings. Thereafter, on July 21, 2009, after pleading nolo contendere, Respondent was convicted of felony count of violating Penal Code section 530.5, subdivision (a) [identity theft] in the criminal proceeding entitled *The People of the State of California v. Marc Anthony Basillo aka Marc Anthony Basallo* (Super. Ct. Los Angeles County, 2009, No. GA076497). The Court sentenced Respondent to 148 days in jail and placed him on three years of formal probation.

6. The crimes set forth in Findings 3; 4 and 5 separately and in combination are substantially related² to the qualifications, functions or duties of a person holding the license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license as pharmacy technician to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

¹ Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to section 4022.

² California Code of Regulations, title 16, section 1770.

Consequent Conduct

7. On December 29, 2008 and April 16, 2009, Respondent sustained convictions involving the use, consumption, or self-administration of dangerous drugs, to wit, methamphetamine as set forth in Findings 3 and 4.

8. On December 15, 2007 and December 29, 2007, Respondent was in possession of methamphetamine, a controlled substance and dangerous drug, without valid prescription as set forth in Findings 3 and 4.

9. Respondent admitted to using methamphetamine, to the extent or in a manner as to be dangerous or injurious to himself or others as set forth in Findings 3 and 4.

10. Respondent obtained and possessed controlled substances without valid prescription as set forth in Findings 3 and 4.

11. Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and corruption by the totality of criminal conduct set forth in Findings 3, 4 and 5.

Rehabilitation to Date

12. Respondent has completed jail time and is presently in compliance with conditions of probation. He will remain on probation for at least one year and two months. He has suffered no other conviction and is presently in compliance with society's norms and rules of civil behavior.

13. Respondent, an admitted meth addict, undertook inpatient drug abuse therapy at Phoenix House from September 3, 2009 to March 1, 2010. His total program included six month inpatient treatment, three months outpatient treatment and six months "live-out" treatment in a sober living facility. For his compliance with treatment Respondent did receive a Certificate of Achievement from Phoenix House on March 5, 2011.

14. Respondent is now employed at 29 Carrots Catering as a warehouseman, setting up for weddings and other catered events. There is no evidence that he is other than a productive, honest and trustworthy employee.

15. Respondent still in his youth at age 27 is committed to his recovery. He is a manager at a sober living facility and gives talks to residents in recovery. His sponsor and others including his family are parts of his support group. He is the father of a three year old boy who is in custody of Respondent's parents. He remains close to his child, his parents and a sister, aged 18. At present Respondent has stability of family life and fulfills parental and familial obligations.

16. Respondent was open and honest in his testimony and was cooperative and forthcoming with the Board during the pendency of this proceeding. He is contrite and remorseful about his wrongdoing and that contrition and remorse persists.

17. Respondent is commended for his rehabilitation efforts set forth in Findings 12 through 16. However, the crimes are recent. The crime, as set forth in Finding 5 directly involves moral turpitude. Given a recent crime involving moral turpitude and a pattern of recent drug abuse a record of clear and convincing rehabilitation is necessary for continued licensure. Respondent is still on probation, the felony has not been reduced to a misdemeanor and no crimes have been expunged. Additionally, Respondent credibly claims a sobriety date of August 23, 2009 but there was no documentation of same. That is, there is no record of negative laboratory test results and no testimony or letters from counselors or therapists.

Costs

18. Pursuant to Business and Professions Code section 125.3³ the Complainant certifies costs of investigation and enforcement of the case in the sum of \$8,097.75. The costs are reasonable.

19. Respondent's income is barely sufficient to meet the activities of daily living and he does suffer from economic hardship. Additionally – as do most Californians – he suffers from the effects of the Great Recession.⁴ In sum, he has limited resources and at the present time, limited income.

LEGAL CONCLUSIONS

Violations

1. Respondent is subject to disciplinary action under Business and Professions Code (Code) sections 490, 4300 and 4301, subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence his present

³ Business and Professions Code section 125.3 provides that in any order issued in resolution of a disciplinary proceeding before a Bureau within the Department of Consumer Affairs where a licentiate is found to have committed a violation or violations of the licensing act, the Bureau may request the administrative law judge to order the license to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

⁴ The financial crisis of year 2007 to the present triggered by a liquidity shortfall in the United States banking system caused by the overvaluation of assets. Some economists claim it has ended. Other economists claim it persists and will continue to persist given the number of citizens unemployed or underemployed.

or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare, by reason of Findings 3, 4 and 5 separately and in combination.

2. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (k) by reason of Finding 7.

3. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct by reason of Finding 8.

4. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h) on the grounds of unprofessional conduct by reason of Finding 9.

5. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j) on the grounds of unprofessional conduct, for violating Health and Safety Code section 11173, subdivision (a) by reason of Finding 10.

6. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f) on the grounds of unprofessional conduct by reason of Finding 11.

Costs

7. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider a Respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

8. Applying the Zuckerman factor of ability to pay the costs are here reduced to the sum of \$1,000.00 by reason of Finding 19.

9. Cause exists for an Order of Costs in the amount of \$1,000.00 by reason of Legal Conclusions 7 and 8.

Disposition

10. California Code of Regulations, title 16, section 1769, subdivision (b), a regulation of the Board entitled Criteria of Rehabilitation, states in pertinent part:

- - -

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) The nature of severity of the act(s) or offenses.
- (2) Total Criminal Record.
- (3) The time that has elapsed since commission of the act(s) or offense.
- (4) Whether the licensee 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.

11. In the same sequential order:

- (1) All felonies (Findings 3 and 5) involve serious criminality.
- (2) The crimes set forth in Findings 3, 4 and 5 occurred over a short and recent period of time.
- (3) But two years have passed since the last conviction.
- (4) Respondent is still on probation.
- (5) To date, as is set forth in Finding 17, Respondent's rehabilitation is not yet complete.

12. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of a disciplinary proceeding is to protect the public⁵, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

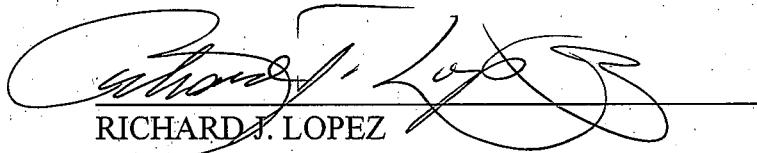
13. Given the analyses set forth in Legal Conclusion 11 Respondent has not been properly rehabilitated from his two felonies and one misdemeanor. He does have a good start toward proper rehabilitation (Findings 12 – 16). A good start is not enough for continued licensure. Accordingly, the order which follows is in the public interest.

ORDER

1. Pharmacy Technician License No. TCH 46875 previously issued by the Board to Marc Anthony Basallo is hereby revoked.

2. Marc Anthony Basallo shall pay to the Board at its Sacramento address the sum of \$1,000.00 as costs within sixty (60) days of the effective date of this Decision.

Dated: August 19, 2011


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:ref

⁵ *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 LESLIE A. WALDEN
Deputy Attorney General
4 State Bar No. 196882
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-3465
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:	Case No. 3259
12 MARC ANTHONY BASALLO	OAH No. L-2011010125
13 841 Canterbury Lane	FIRST AMENDED
14 San Dimas, CA 91773	ACCUSATION
15 Pharmacy Technician License No. TCH 46875	
16 Respondent.	

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
- 21 2. On or about July 29, 2003, the Board issued Pharmacy Technician License No.
22 TCH 46875 to Marc Anthony Basallo aka Marc Anthony Basillo (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on March 31, 2013, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

6. Section 4060 states that “[n]o person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .”

7. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or revoked.”

8. Section 4301 states, in pertinent part:
"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

"(f) 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.

....

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

....

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

3 **COST RECOVERY**

4 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

9 11. Methamphetamine is a Schedule II controlled substance as designated by Health and
10 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
11 section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

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

14 12. Respondent is subject to disciplinary action under section 490, 4300 and 4301,
15 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
16 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
17 related to the qualifications, functions or duties of a registered pharmacy technician which to a
18 substantial degree evidence his present or potential unfitness to perform the functions authorized
19 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

20 a. **IDENTITY THEFT, A FELONY**

21 On or about July 21, 2009, after pleading nolo contendere, Respondent was convicted of
22 one felony count of violating Penal Code section 530.5(a) [identity theft] in the criminal
23 proceeding entitled *The People of the State of California v. Marc Anthony Basillo aka Marc*
24 *Anthony Basallo* (Super. Ct. Los Angeles County, 2009, No. GA076497). The Court sentenced
25 Respondent to 148 days in jail, and placed him on three (3) years probation. The circumstances
26 underlying the conviction are that on or between January 20, 2009 through April 8, 2009,
27 Respondent willfully and unlawfully obtained personal identifying information of M.A., C.M.,

28 ///

1 P.M., S.F., D.M., M.S., P.K., S.B., S.L., S.H., S.S. and J.C. and used the information for unlawful
2 purposes.

3 b. POSSESSION OF CONTROLLED SUBSTANCE, A MISDEMEANOR

4 On or about April 16, 2009, after pleading guilty, being placed on deferred entry of
5 judgment for 18 months, violating the deferred entry of judgment program and being terminated
6 from the deferred entry of judgment program, Respondent was convicted of one misdemeanor
7 count of violating Health and Safety Code section 11377(a) [possession of controlled substance]
8 in the criminal proceeding entitled *The People of the State of California v. Marc Basallo* (Super.
9 Ct. Los Angeles County, 2008, No. 8GN03316). The circumstances underlying the conviction
10 are that on or about December 29, 2007, Respondent admitted to being in possession of a
11 smoking device, a small digital scale with another small glass pipe and methamphetamine without
12 a valid prescription. Respondent was arrested.

13 c. POSSESSION OF CONTROLLED SUBSTANCE, A FELONY

14 On or about December 29, 2008, after pleading guilty, being placed on deferred entry of
15 judgment for 18 months, violating the deferred entry of judgment program and being terminated
16 from the deferred entry of judgment program, Respondent was convicted of one felony count of
17 violating Health and Safety Code section 11377(a) [possession of controlled substance] in the
18 criminal proceeding entitled *The People of the State of California v. Marc Anthony Basallo*
19 (Super. Ct. Los Angeles County, 2007, No. BA333754). The circumstances underlying the
20 conviction are that on or about December 15, 2007, during a vehicle stop, Respondent was found
21 in possession of two (2) glass methamphetamine smoking pipes and methamphetamine without a
22 valid prescription. Respondent was arrested.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Convictions Involving Dangerous Drugs)**

25 13. Respondent is subject to disciplinary action under sections 4300 and 4301,
26 subdivision (k), in that on or about December 29, 2008, and April 16, 2009, Respondent sustained
27 convictions involving the use, consumption, or self-administration of dangerous drugs, to wit,

28 ///

1 methamphetamine. Complainant refers to and by this reference incorporates the allegations set
2 forth above in paragraph 12, subparagraphs b and c, inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Possession of Controlled Substances)**

5 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in
7 that on or about December 15, 2007, and December 29, 2007, Respondent was in possession of
8 methamphetamine, a controlled substance and dangerous drug, without valid prescriptions.
9 Complainant refers to and by this reference incorporates the allegations set forth above in
10 paragraph 12, subparagraphs b and c, inclusive, as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Controlled Substances)**

13 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
14 subdivision (h), on the grounds of unprofessional conduct, in that Respondent admitted to using
15 methamphetamine, which use is it to the extent or in a manner as to be dangerous or injurious to
16 himself or others. Complainant refers to and by this reference incorporates the allegations set
17 forth above in paragraph 12, subparagraphs b and c, inclusive, as though set forth fully.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violating Drug Statutes)**

20 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
21 subdivision (j), on the grounds of unprofessional conduct, for violating Health and Safety Code
22 section 11173, subdivision (a), in that Respondent obtained/possessed controlled substances
23 without valid prescriptions. Complainant refers to and by this reference incorporates the
24 allegations set forth above in paragraph 12, subparagraphs b and c, as though set forth fully.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

27 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
28 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts

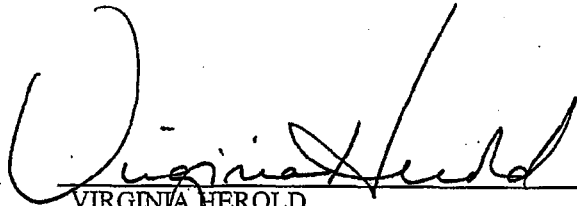
1 involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to
2 and by this reference incorporates the allegations set forth above in paragraphs 12 - 16, inclusive,
3 as though set forth fully.

4 PRAYER

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

- 7 1. Revoking or suspending Pharmacy Technician License No. TCH 46875, issued to
8 Marc Anthony Basallo;
- 9 2. Ordering Marc Anthony Basallo to pay the Board of Pharmacy the reasonable costs
10 of the investigation and enforcement of this case, pursuant to section 125.3; and
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 7/18/11



15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 LA2009602511
22 7/14/2011dmm
23 60652130.doc