

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

In the Matter of the Statement of Issues
Against:

DARCELLE BANKS

Pharmacy Technician Registration Applicant

Respondent.

Case No. 3687

OAH Case No. 2012020666

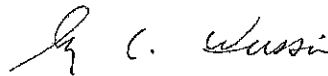
DECISION AND ORDER

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 February 7, 2013.

It is so ORDERED on January 8, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Statement of Issues
Against:

DARCELLE S. BANKS,

Respondent.

Agency Case No. 3687

OAH Case No. 2012020666

PROPOSED DECISION

Administrative Law Judge Deena Ghaly, Office of Administrative Hearings, State of California, heard this matter on August 21, 2012, in Los Angeles, California.

Cristina Felix, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (the Board).

Darcelle Shrona Banks (Respondent) represented herself.

The record was held open until August 24, 2012 for Respondent to submit signed letters of reference. Respondent timely submitted a signed and dated letter from her church pastor, Thom Washington, and a signed performance evaluation from her manager, Anney Cho, which were collectively marked Respondent's Exhibit E and admitted into evidence as administrative hearsay. The matter was deemed submitted on August 24, 2012.

FACTUAL FINDINGS

Background

1. On December 7, 2011, Complainant, in his official capacity, filed the Statement of Issues denying Respondent's application for a pharmacy technician license. Respondent timely filed a Notice of Defense and this hearing ensued.
2. Complainant contends Respondent's application for a registered dental assistant license should be denied based on three grounds: (i) Respondent's conviction of crimes substantially related to the qualifications, functions or duties of licensed pharmacy

technicians; (ii) Respondent's commission of a dishonest and fraudulent act; and (iii) Respondent's commission of an act warranting denial of a license.

3. Respondent maintains that her criminal activity was limited to a discrete period when she was under the influence of an abusive boyfriend and that she has completely changed all aspects of her life since then. She asks the Board to grant her license.

Respondent's Criminal Conviction

4(a). On April 20, 2005, following Respondent's guilty plea, the United States District Court for the Central District of California, in case number 2:04-cr-01170-AHM-2, convicted Respondent of violating Title 18 United States Code section 371 (conspiracy to commit offense or to defraud the United States), a felony. The court placed Respondent on two years' probation and ordered her to pay a fine.

4(b). The terms and conditions of Respondent's probation included, among others, complying with the rules and regulations of the U.S. Probation Office, paying a \$100 special assessment and a \$1500 fine, cooperating with DNA collection procedures, and performing 20 hours per week of community service during weeks when not working at least part-time or enrolled in an educational or vocational program. Respondent successfully completed her term of probation.

4(c). The facts and circumstances underlying Respondent's conviction are that, in June 2001, Respondent, then 19 years old, was living at an "extended stay" motel with her boyfriend. Respondent's boyfriend convinced Respondent to lure her grandmother to visit them there with the intention of stealing blank bank checks from her. Respondent tried to persuade her boyfriend not to go forward with his plans; however, she was afraid of him and ultimately did not interfere with his actions or warn her grandmother about what was in store. Respondent's boyfriend took several blank checks from the grandmother's checkbook while she was in the bathroom. He arranged to have a third individual negotiate one of the checks at the bank upon which it was drawn but the scheme was not successful and no funds were removed from the grandmother's account.

Factors in Mitigation and Rehabilitation

5. During the time Respondent was with her boyfriend, she was estranged from her family. Isolated and often afraid, Respondent felt she had no choice but to go along with her boyfriend's schemes. After the 2001 incident, Respondent broke off relations with her boyfriend and returned to live in close proximity to her family. She took on several entry-level jobs, including one with a company that ran a chain of frozen yogurt shops, Red Mango. At Red Mango, Respondent rose through the ranks, eventually becoming a manager there. Her duties included handling and accounting for cash. Her supervisors expressed confidence in her trustworthiness and reliance on her work ethic and enthusiasm.

6. In 2008, Respondent left Red Mango to complete the necessary coursework for a pharmacy technician license. Respondent attended Boston Reed College in Napa, California, completing 240 hours of instruction. She also successfully completed a pharmacy technician externship at Kaiser Permanente. Thereafter, Respondent filed her application for registration as a pharmacy technician, duly disclosing and explaining her criminal conviction.

7. Since completing her studies, Respondent has been working at a department store on its inventory team. Her duties include filling online orders, tracking inventory throughout the store, and assisting other members of her team. Her supervisor has given her positive employment evaluations, noting in particular, her energy and enthusiasm, willingness to assist her colleagues, and natural leadership potential.

8. Respondent testified on her own behalf at the hearing. She was forthright and candid, accepting responsibility for her past transgressions and credibly expressing her remorse. She was also credible and persuasive in explaining the proactive efforts she has undertaken to leave her troubled youth behind and secure her future, including completing her studies, working with the intent to excel at whatever employment she has been able to secure, and participating in church activities.

Qualifications, Functions and Duties of Pharmacy Technician

9. Registered pharmacy technicians work under the supervision but not necessarily the direct observation of pharmacists. They are responsible for all of the non-discretionary duties of a pharmacist, including dispensing medications, calling doctors for authorization to refill prescriptions, and handling money. They often have access to private and sensitive patient information such as credit card numbers and other financial information. Their integrity, sound judgment and maturity are of paramount importance to effectively practice their profession.

LEGAL CONCLUSIONS

Applicable Legal Provisions

1. Business and Professions Code section 480¹ provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (§§ 480, subd. (a)(1) and (3)(B).) Section 480 also provides that an applicant can be

¹ All further statutory references are to the Business and Professions Code unless otherwise specified.

denied a license for the commission of an act involving fraud, dishonesty, or conceit (§ 480, subd. (a)(2)) or done an act which could be the basis of disciplining a license, including professional misconduct (§§ 480, subd. (3)(A) and 4301).

2. California Code of Regulations, title 16, section 1770 provides that, for purposes of evaluating a license application, a crime or act is substantially related to the qualifications, functions or duties of the profession if “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.”

3. 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.

[¶...¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of [federal and state controlled substance convictions] shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline.

[¶...¶]

(p) Actions or conduct that would have warranted denial of a license.

4. A crime involving fraud, including conspiracy to commit fraud, is one of moral turpitude. (*Otash v. Bureau of Investigators and Adjusters* (1965) 230 Cal. App. 2d 560.)

//
//
//
//
//

Burden and Standard of Proof

5. The burden of proof is on the applicant to establish she is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal. 2d 167.) The standard of proof is a preponderance of the evidence. (Evid. Code § 115.)

Rehabilitation and Mitigation

6. Under CCR, title 16, section 1769, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and her present eligibility for registration: (1) the nature and severity of the act or offense; (2) subsequent acts; (3) the time that has elapsed since commission of the act or crime; (4) whether the applicant has complied with any terms of probation; and (5) "Evidence, if any, of rehabilitation submitted by the applicant."

Disposition

7. Cause exists to deny Respondent's application for a pharmacy technician license pursuant to sections 480, subdivisions (a)(1) and (3)(B) and 4301, subdivision (l) for conviction of a crime and commission of an act substantially related to the qualifications, functions and duties of pharmacy technicians as set out in Complainant's First Cause for Denial of Application. Respondent's crime demonstrates a willingness to abuse and exploit an innocent individual (and a close relative) in a manner inconsistent with the integrity and personal sense of responsibility inherent to the qualifications of a pharmacy technician. (Factual Finding 4(c), and Legal Conclusions 1 through 3.)

8. Cause exists to deny Respondent's application for a pharmacy technician license pursuant to section 480, subdivision (a)(2) in conjunction with section 4301, subdivision (f) for unprofessional conduct, specifically, a dishonest act, as set out in Complainant's Second Cause of Denial of Application.² The conspiracy to steal blank checks with the intent to draw money from the victim's bank account without her knowledge or consent, necessarily involves dishonesty, fraud and deceit. (Factual Finding 4(c), and Legal Conclusions 1 and 3.)

² While section 4301 provides only for the suspension or revocation of an existing license based on unprofessional conduct, in conjunction with section 480, the same grounds can be the bases to deny a license application. Complainant does not expressly identify section 480 among the provisions applicable to its second and third cause for denial of Respondent's application; however, both causes reference and incorporate the allegations set out in the first cause for denial of Respondent's application, which does list section 480. Under these circumstances, this Administrative Law Judge has found grounds for denial of Respondent's application based on Complainant's Second Cause for Denial and, as noted in Legal Conclusion 9 *post*, Complainant's Third Cause for Denial.

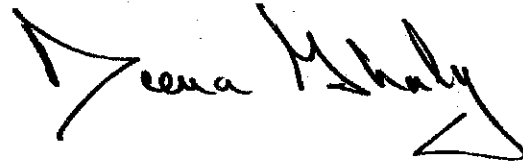
9. Cause exists to deny Respondent's application for a pharmacy technician license pursuant to section 480 in conjunction with section 4301, subdivision (p) for unprofessional conduct, specifically, acts warranting denial of license, as set out in Complainant's Third Cause of Denial of Application. As noted in Legal Conclusion 1 *ante*, section 480 provides a number of grounds including conviction for a substantially related crime, unprofessional conduct, and acts constituting moral turpitude, for denying a license. Although somewhat repetitive of the findings noted in Legal Conclusions 7 and 8 *ante*, Respondent's act, as an act warranting denial of a license, is a separate cause for denial of the application. (Factual Findings 4(c), and 9, and Legal Conclusions 1 and 3.)

10. Although cause exists to discipline Respondent, the analysis is not complete until the question of whether she is rehabilitated is addressed. In reviewing the totality of the circumstances surrounding her case, it is clear that Respondent has shown sufficient evidence of rehabilitation such that granting her an unrestricted license will not endanger the public. Specifically, (1) although the scheme in which Respondent involved herself was serious and represented a significant lapse in judgment, ultimately it did not result in any loss to the victim; (2) the record indicates that Respondent's crime was an isolated incident and she has no other criminal history; (3) over 11 years have passed since the incident, a sufficiently long period to establish that Respondent is not likely to repeat her mistake and that it was out of character for her ; (4) Respondent successfully completed the term and conditions of her probation; and (5) Respondent's testimony and supporting evidence demonstrate that her work ethic, commitment to a law-abiding life, and civic involvement support a finding that she is rehabilitated. (Factual Findings 5 through 8, and Legal Conclusion 6.)

ORDER

Respondent Darcelle Shrona Banks' application for licensure as a pharmacy technician is granted.

Dated: September 27, 2012



DEENA GHALY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 KIMBERLEY J. BAKER-GUILLEMET
Deputy Attorney General
4 State Bar No. 242920
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2533
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
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. 3687

12 **DARCELLE SHRONA BANKS**
13 **3603 W. Hidden Ln. #120**
14 **Rolling Hills Estates, CA 90274**
Pharmacy Technician Registration
Application

STATEMENT OF ISSUES

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about February 25, 2009, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration Application from
24 Darcelle Shrona Banks (Respondent). On or about February 22, 2009, Darcelle Shrona Banks
25 certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on March 18, 2010.

27 ///

28 ///

JURISDICTION

1
2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4301 of the Code states, in pertinent part:

6 "The board shall take action against any holder of a license who is guilty of unprofessional
7 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

8 Unprofessional conduct shall include, but is not limited to, any of the following:

9

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

13

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3

4 "(p) Actions or conduct that would have warranted denial of a license."

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

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

12 6. Section 480 of the Business and Professions Code provides, in pertinent part, that a
13 board may deny a license if the applicant has been convicted of a crime substantially related to
14 the qualifications, functions or duties of the business or profession for which application is made,
15 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
16 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
17 a false statement of fact required to be revealed in the application.

18 **REGULATORY PROVISIONS**

19 7. California Code of Regulations, title 16, section 1770, states:

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

26 ///

27 ///

28 ///

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Conviction)

8. Respondent is subject to disciplinary action under sections 480 and 4301, subdivision (l), of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed pharmacy technician in that on or about April 20, 2005, after pleading guilty, Respondent was convicted of one felony count of violating Title 18, United States Code section 371 [conspiracy to commit offense or to defraud United States], in the criminal proceeding entitled *United States of America v. Darcell Banks* (C.D. Ca., 2005, No. 2:04-cr-01170-AHM-2). The Court placed Respondent on two (2) years probation and ordered her to pay a fine.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonest Acts)

9. Respondent is subject to disciplinary action under section 4301, subdivision (f), on the grounds of unprofessional conduct in that on or about April 20, 2005, Respondent was convicted for her commission of a dishonest and fraudulent act. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 8, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting License Denial)

10. Respondent's application is subject to denial under section
Respondent is subject to disciplinary action under section 4301, subdivision (p), in that Respondent engaged in actions or conduct that warrant denial of a license. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 8, as though set forth fully.

///
///
///
///

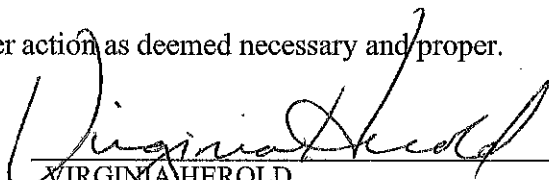
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Darcelle Shrona Banks for a Pharmacy Technician Registration Application;
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/7/11



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

LA2010501812
51005640.doc