

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

In the Matter of the Statement of Issues Against:

ARUTYUN BAGDATYAN
Aka ARUTYAN BAGDATYAN
13518 Bassett Street
Van Nuys, CA 91405

Applicant

Respondent.

Case No. 3770

OAH No. 2011050171

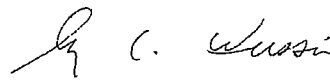
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on January 11, 2012.

It is so ORDERED December 12, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Van Nuys, CA 91405,

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PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings on September 27, 2011, at Los Angeles, California.

Christina Thomas, 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 Statement of Issues in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On April 15, 2010, the Board of Pharmacy (Board) received an application for a Pharmacist Intern License from Arutyun Bagdatyan, also known as Arutyun Bagdatyan, Respondent herein. On April 5, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

Procedure

3. The Board denied the application on May 28, 2010. Respondent timely appealed the Board's denial. All pre-hearing jurisdictional requirements have been met by the parties. Jurisdiction for this proceeding exists. Administrative proceedings before the Board are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500 *et seq.*

Criminal Conviction

4. Over a period of time from July, 2006 to December, 2006, while employed as a cashier at KB Toys in Sherman Oaks, California, Respondent skimmed 17 credit cards of customers and provided the credit card numbers to another. He was paid \$50.00 for each credit card number. The credit cards were fraudulently used to purchase approximately \$20,000.00 worth of merchandise.

5. As a result of his conduct set forth in Finding 4 a two count Felony Complaint was filed in the Los Angeles Superior Court Case No. LA 055059 on May 10, 2007. Count 1 of the Complaint states:

COUNT 1

On or between July 22, 2006 and December 15, 2006, in the County of Los Angeles, the crime of Theft, in violation of Penal Code section 484e(b), a Felony, was committed by Arutyun Bagdatyan, who did, within a consecutive 12-month period, acquire access cards issued in the names of four and more persons with reason to know they were taken and retained under circumstances which constitute a violation of the other subdivisions of this section.

6. On September 11, 2007, after pleading nolo contendere to said Count 1, Respondent was convicted of one felony count of violating Penal Code section 484e, subdivision (b) (grand theft of access cards) in the criminal proceeding entitled *The People of the State of California v. Arutyun Bagdatyan* (Super. Ct. Los Angeles County, 2007, No. LA055059).

7. The crime set forth in Finding 6 is substantially related¹ to the qualifications, functions or duties of a person holding the applied-for-license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license as a pharmacy intern license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

¹ California Code of Regulations, title 16, section 1770.

Consequent Conduct

8. Respondent committed acts – the 17 acts set forth in Finding 4 – which if done by a licentiate would be grounds for suspension or revocation of his license.

9. The conduct set forth in Finding 4 constitutes dishonest acts, fraud and deceit with the intent to substantially benefit himself and substantially injure another.

Rehabilitation and Character

10. As a result of the conviction Respondent was placed on three years formal probation and did complete 1440 hours of court-ordered work for CalTRANS, paid all fines, and paid restitution in the amount of \$19,500.00.

11. On October 26, 2009, probation was terminated. On March 18, 2010, the felony was reduced to a misdemeanor and the matter was expunged pursuant to Penal Code section 1203.4. Respondent has suffered no other conviction and is, presently, in conformity to society's norms and rules of civil behavior.

12. Respondent took advantage of a position of trust – a cashier – to commit the crime. The crime, *per se*, involves moral turpitude. Given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for licensure. The time since release from probation is not sufficient to demonstrate such rehabilitation. In particular, there is no evidence of:

- Completion of formal education or vocational training courses for economic self-improvement.
- Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- New and different social and business relationships from those which existed at the time of the crime.
- A change in attitude from that which existed at the time of the conviction as demonstrated by evidence from probation or probation officers or law enforcement officials competent to testify as to Respondent's social adjustments.

14. Respondent is not yet remorseful. In his testimony he referred to the crime² as a "mistake". Additionally, there were no character witnesses and no evidence, oral or documentary from a prospective employer with knowledge of the conviction and the facts and circumstances of the conviction.

LEGAL CONCLUSIONS

Violations

1. Respondent's application is subject to denial under Business and Professions Code (Code) sections 480, subdivision (a)(1), 490 and 4301, subdivision (1) in that Respondent was convicted of a substantially related crime, as is set forth in Finding 6 combined with Finding 7.

2. Respondent's application is subject to denial under Code section 480, subdivision (a)(2), in that Respondent did commit dishonest acts with the intent to substantially benefit himself, and substantially injure another, by reason of Findings 4 and 9.

3. Respondent's application is subject to denial under Code sections 4301, subdivision (p) and 480, subdivisions (a)(3)(A) and (B), by reason of Findings 4 and 8.

Licensing Considerations

4. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate order. Additionally, the objective of a disciplinary proceeding is to protect the public³, 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.

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

² The conviction stands as conclusive evidence of Respondent's guilt of the offense. Collateral attack of that conviction in this proceeding is prohibited. *Arneson v. Fox* (1980) 28 Cal. 3rd 440, 449; *Matanky v. Board of Medical Examiners* (1978) 70 Cal. App. 3rd 293, 302.

³ *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.

(a) When considering the denial . . . of a license . . . the board in evaluating the rehabilitation of the applicant and his present eligibility for a licensing or registration will consider the following criteria:

- (1) The nature of severity of the act(s) or offenses 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 suspension or 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) referenced 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.

6. In the same sequential order:

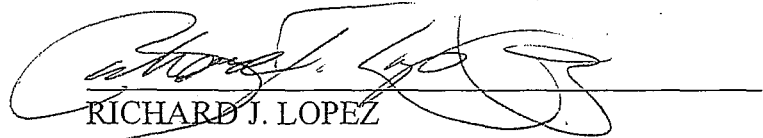
- (1) The crime is severe. The underlying conduct demonstrated planning, sophistication and corruption. Anyone convicted of the crime set forth in Finding 6 presents a risk to any pharmacy or any pharmacy patron.
- (2) None.
- (3) Four years.
- (4) Respondent has complied with probation.
- (5) Findings 10 and 11 only. See Legal Conclusion 7.

7. Respondent took advantage of a position of trust as an employee to commit a series of planned, corrupt acts resulting in financial harm to a number of victims. Given the gravity of the crime insufficient time has passed to establish the necessary record of clear and convincing rehabilitation for licensure. Accordingly, the Order which follows is consistent with the Board's duty to protect public interest.

ORDER

The application of Arutyun Bagdatyan for a Pharmacist Intern License is hereby denied.

Dated: October 24, 2011

A handwritten signature in black ink, appearing to read "Richard J. Lopez", is written over a horizontal line.

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:ref

1 KAMALA D. HARRIS
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2557
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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13 Against:	
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15 a.k.a., ARUTYAN BAGDATYAN	
16 13518 Bassett Street	
17 Van Nuys, CA 91405	
18 Respondent.	

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 April 15, 2010, the Board of Pharmacy (Board) received an application
23 for a Pharmacist Intern License from Arutyun Bagdatyan, also known as Arutyun Bagdatyan
24 (Respondent). On or about April 5, 2010, Respondent certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on May 28, 2010.

27 ///
28 ///

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or
2 duties of the business or profession for which the licensee's license was issued.

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

9 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
10 subject to discipline, including suspension or revocation.

11 7. Section 4301 states, in pertinent part:

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

16

17 "(1) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in
24 order to fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense substantially
26 related to the qualifications, functions, and duties of a licensee under this chapter. A plea or
27 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
28 conviction within the meaning of this provision. The board may take action when the time for

1 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
2 order granting probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his
4 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
5 dismissing the accusation, information, or indictment.

6
7 "(p) Actions or conduct that would have warranted denial of a license."

8 **REGULATORY PROVISIONS**

9 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of a Crime)**

18 9. Respondent's application is subject to denial under section 480, subdivision (a)(1),
19 in that Respondent was convicted of a crime. On or about September 11, 2007, after pleading
20 *nolo contendere*, Respondent was convicted of one felony count of violating Penal Code
21 section 484E, subdivision (b) [grand theft of access cards] in the criminal proceeding entitled
22 *The People of the State of California v. Arutyun Bagdatyan* (Super. Ct. Los Angeles County,
23 2007, No. LA055059). The Court sentenced Respondent to two years in state prison and
24 placed him on three years formal probation, with terms and conditions. The circumstances
25 surrounding the conviction are that on or about July 22, 2006, while employed at KB Toys, in
26 Sherman Oaks, CA, Respondent skimmed 17 credit cards of customers and provided the credit
27 card numbers to another. He was paid \$50.00 for each credit card number. The credit cards
28 were fraudulently used to purchase approximately \$20,000.00 worth of merchandise.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud, or Deceit)

10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that on or about July 22, 2006, Respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of a License)

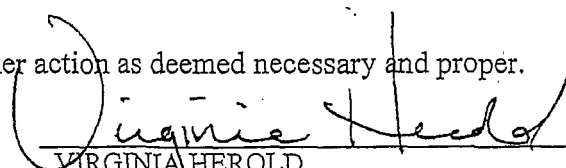
11. Respondent's application is subject to denial under sections 4301, subdivision (p), and 480, subdivision (a)(3) (A) and (B), in that Respondent committed acts which if done by a licentiate would be grounds for suspension or revocation of his license. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist intern which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

PRAYER

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

- 1. Denying the application of Arutyun Bagdatyan, also known as Arutyun Bagdatyan for a Pharmacist Intern License; and
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 3/4/11



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