

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

In the Matter of the Statement of Issues Against:

Case No. 3945

KA'MESHA STAPLES

OAH 2012120210

Pharmacy Technician Applicant

Respondent.

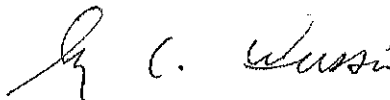
DECISION AND ORDER

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 June 20, 2013.

It is so ORDERED on May 21, 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
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In the Matter of the Statement of Issues
Against:

KA'MESHA STAPLES,

Respondent.

Case No. 3945

OAH No. 2012120210

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on March 18, 2013, in Oakland, California.

Joshua A. Room, Supervising Deputy Attorney General, represented complainant Virginia Herold.

Respondent Ka'Mesha Staples was self- represented.

The matter was submitted for decision on March 18, 2013.

FACTUAL FINDINGS

1. Complainant Virginia Herold made the Statement of Issues in her official capacity as the Executive Officer of the California Board of Pharmacy (board), Department of Consumer Affairs.
2. On October 7, 2008, the board received an application for registration as a pharmacy technician from Ka'Mesha Staples (respondent).
3. By letter dated May 19, 2010, the board notified respondent that her application for registration as a pharmacy technician had been denied based upon her criminal convictions.
4. On July 7, 2010, respondent filed a request for hearing on denial of her application.

5. On March 9, 2006, in the Superior Court of the State of California for the County of Alameda, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 684, subdivision (a) (petty theft), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a pharmacy technician.

Imposition of sentence was suspended and respondent was placed on court probation for 36 months on terms and conditions that included serving one day in county jail and paying fines and fees totaling \$120. Respondent was also ordered to stay away from the store where the offense occurred. Respondent successfully completed probation, and on December 18, 2009, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

The facts underlying the conviction are that on December 13, 2005, respondent stole merchandise valued at less than \$400 from a Macy's store in Hayward, California.

6. On January 22, 2007, in the Superior Court of the State of California for the County of Alameda, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 476 (forgery), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a pharmacy technician.

Imposition of sentence was suspended and respondent was placed on probation for 36 months on terms and conditions that included serving four days in county jail and paying fines and fees totaling \$230 (\$100 stayed). Respondent was also ordered to stay away from the bank where the offense occurred. Respondent successfully completed probation, and on November 13, 2009, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

The facts underlying the conviction are that on April 22, 2005, respondent deposited a fraudulent check for \$3,500 into her account at Washington Mutual Bank.

7. At hearing respondent claimed that her petty theft conviction was the result of being at the wrong place at the wrong time with people who were doing the wrong thing. She denied actually stealing anything from Macy's and asserted she was charged because she initially "refused to snitch" on her friends. She states she later changed her mind, but by then it was too late to avoid a conviction. Respondent was 18 years old at the time.

With respect to her forgery conviction, respondent explained that she deposited a stolen check that had been given to her by her boyfriend at the time. Respondent claimed she did not know the check was stolen and that she thought her boyfriend had received the check as payment for his work in construction. According

to respondent, they were planning to move in together and he told her to deposit the check to use as money for the security deposit. Respondent stated she was 19 years old at the time and young and naïve.

8. Respondent's explanation of her convictions was not entirely credible.

9. Respondent is 26 years old. She states that she no longer associates with her former boyfriend or the friends who stole from the Macy's store. She has moved to San Ramon and lives with her grandmother. She also recently had a baby. Respondent currently works at Goodwill, but she spends most of her time caring for her grandmother and her child. Although respondent completed the pharmacy technician program at Everest College in October 2008, she has not been able to work as a pharmacy technician without a registration. She has had a series of "dead end jobs" in recent years. Respondent wants to work as a pharmacy technician in order to improve her financial position and provide a better life for herself and her child.

10. On direct examination respondent testified that she had not been in trouble since her convictions. However, the evidence established that respondent was arrested on May 14, 2011, for stealing items from a Safeway store in San Ramon. Respondent did not have identification with her when she was detained and initially identified herself to authorities as "Rebecca." However, fingerprints taken at the police station identified respondent as the shoplifter. At hearing, respondent denied ever being arrested in San Ramon. The current status of this case was not established by the record.

The evidence also established that respondent was involved in physical altercation with her mother on March 12, 2012, that resulted in the police being called. Respondent asserts her mother was the aggressor in the incident, but the police report indicates that witnesses identified respondent as the aggressor. The current status of this case was not established by the record.

11. Respondent did not submit any letters of reference, or call any witnesses to testify on her behalf.

12. Pharmacist Manisha Patel, who currently works for the board as an investigator, testified regarding the duties of a pharmacy technician. She explained that a pharmacy technician assists the pharmacist in his or her daily activities by, among other things, pulling drugs, matching drugs to labels, and typing prescriptions. In the course of his or her duties a pharmacy technician has access to prescription medications that have a high street value. And the technician also acquires information about how a pharmacy handles medications that is not available to the ordinary individual; such information could potentially be used to facilitate the fraudulent acquisition of prescription medicine. The board therefore considers it very important that a pharmacy technician be honest and trustworthy.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300, subdivision (c), provides that the board may refuse to issue a license to an applicant guilty of unprofessional conduct. Unprofessional conduct includes any action involving moral turpitude, dishonesty, fraud, deceit or corruption (Bus. & Prof. Code, § 4301, subd. (f)), and conviction of a crime substantially related to the qualifications, functions and duties of a licensee (Bus. & Prof. Code, § 4301, subd. (l)).

2. Business and Professions Code section 480, subdivision (a)(1), provides that a board may deny a license if the applicant has been convicted of a crime.

Business and Professions Code section 480, subdivision (a)(2), provides that a board may deny a license if the applicant has done any act involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or substantially injure another.

Business and Professions Code section 480, subdivision (a)(3), provides that a board may deny a license if the applicant has done any act that if done by a licensee would be grounds for discipline of the license.

3. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered to be substantially related to the qualifications, functions and duties of a licensee if to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license or registration in a manner consistent with the public health, safety or welfare.

4. The matters set forth in Findings 5 and 6 establish that respondent was guilty of unprofessional conduct and committed acts that were grounds for discipline of a pharmacist license. Cause to deny respondent's application for registration as a pharmacy technician thereby exists pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 4300, subdivision (c).

5. Cause to deny respondent's application for registration as a pharmacy technician exists pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 4300, subdivision (c), in conjunction with Business and Professions Code section 4301, subdivision (f), in that respondent engaged in dishonest acts with the intent to substantially benefit herself or another, as set forth in Findings 5 and 6.

6. Cause to deny respondent's application for registration as a pharmacy technician exists pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 4300, subdivision (c), in conjunction with Business and Professions Code 4301, subdivision (1), and California Code of Regulations, title 16, section 1770, in

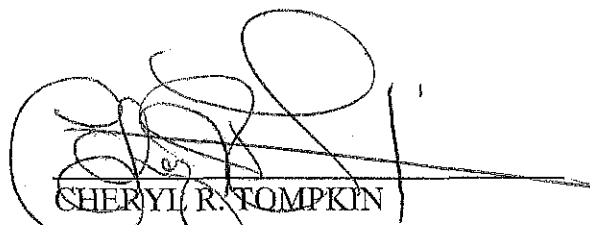
that respondent has been convicted of crimes that are substantially related to the practice of a pharmacy technician, as set forth in Findings 5 and 6.

7. Respondent has taken positive steps toward rehabilitation, as evidenced by her completion of the pharmacy technician program, expungement of her convictions, and her decision to sever ties with the friends who were a negative influence. Respondent is to be commended for her efforts. However, it is clear respondent still has not fully accepted responsibility for her actions. Despite her conviction for petty theft she denies she actually stole anything from Macy's, and she claims she was convicted of forgery because her former boyfriend took advantage of her. Respondent consistently characterizes herself as the innocent victim. In addition, respondent's lack of candor at hearing (denying a documented arrest for theft in San Ramon and falsely claiming that she had not been in any trouble since her convictions), also raises questions about the extent of her rehabilitation and her ability to fulfill the duties and responsibilities of a pharmacy technician in an ethical and honest manner. Finally, it must be noted that respondent failed to present any witnesses, letters of reference or similar evidence to support her claims of rehabilitation. Thus, after considering all of the evidence, it is determined that it would be contrary to the public interest to grant respondent a pharmacy technician registration at this time.

ORDER

The application of Ka'Mesha Staples for registration as a pharmacy technician is denied.

DATED: April 17, 2013


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Statement of Issues Against: Case No. 3945

11 **KA'MESHA STAPLES**
12 **2320 90th Avenue, Apt. # 3**
13 **Oakland, CA 94603**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 **Respondent.**

16 Complainant alleges:

17 PARTIES

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

20 2. On or about October 7, 2008, the Board of Pharmacy, Department of Consumer
21 Affairs received an Application for Registration as a Pharmacy Technician from Ka'Mesha
22 Staples (Respondent). On or about September 12, 2008, Respondent certified under penalty of
23 perjury as to the truthfulness of all statements, answers, and representations in the Application.

24 The Board denied the Application on May 19, 2010.

25 JURISDICTION

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

STATUTORY AND REGULATORY PROVISIONS

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

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy”

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be 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.

6. Section 480 of the Code states, in pertinent part:

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

“(1) Been convicted of a crime. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

“(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another; or substantially injure another; or

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

“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 . . . [license].”

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

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

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

9 FIRST CAUSE FOR DENIAL OF APPLICATION

10 (Conviction of Substantially Related Crime(s))

11 8. Respondent's application is subject to denial under the following section(s) of the
12 Code: 480(a)(1); 480(a)(3) by reference to 4301(I); and/or 4300(c) by reference to 4301(I) and
13 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
14 crime, in that on or about March 9, 2006, in a case titled *People v. Kamesha Laverius Staples*,
15 Case No. 390196-2 in Alameda County Superior Court, Respondent was convicted of violating
16 Penal Code section 484(a) (Petty Theft), a misdemeanor, as follows:

17 a. On or about January 9, 2006, based on an incident that took place on or about
18 December 13, 2005, during which Respondent was alleged to have stolen merchandise from a
19 Macy's store in Hayward, CA, with a value of less than \$400.00, Respondent was charged in
20 Case No. 390196-2 with violating Penal Code section 484(a) (Petty Theft), a misdemeanor.

21 b. On or about March 9, 2006, Respondent pleaded nolo contendere and was
22 found guilty of the charged offense. Imposition of sentence was suspended in favor of a period of
23 court probation of thirty-six (36) months, on terms and conditions including time served (1 day)
24 in County Jail, a stay-away order from the Macy's store in Hayward, CA, and fines and fees.

25 c. On or about December 18, 2009, the plea and verdict of guilty in Case No.
26 390196-2 were set aside and vacated and a plea of not guilty was entered, and the complaint was
27 dismissed, pursuant to Penal Code section 1203.4.

28 ///

1 SECOND CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of Substantially Related Crime(s))

3 9. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
5 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
6 crime, in that on or about January 22, 2007, in a case titled *People v. Ka'Mesha Laverius Staples*,
7 Case No. 518019 in Alameda County Superior Court, Respondent was convicted of violating
8 Penal Code section 476 (Forgery), a misdemeanor, as follows:

9 a. On or about March 22, 2006, based on an incident that took place on or about
10 April 22, 2005, during which Respondent was alleged to have made, passed, uttered, published,
11 or possessed a fraudulent check for \$3,500.00, Respondent was charged in Case No. 518019 with
12 violating Penal Code section 476 (Forgery), a felony.

13 b. On or about January 22, 2007, Respondent pleaded nolo contendere and was
14 found guilty of the lesser-included offense of violating Penal Code section 476 (Forgery), a
15 misdemeanor. Imposition of sentence was suspended in favor of a conditional sentence of thirty-
16 six (36) months, on terms and conditions including time served (4 days) in County Jail, a stay-
17 away order from Washington Mutual Bank, and fines and fees.

18 c. On or about November 13, 2009, the plea and verdict of guilty in Case No.
19 518019 were set aside and vacated and a plea of not guilty was entered, and the complaint was
20 dismissed, pursuant to Penal Code section 1203.4.

21
22 THIRD CAUSE FOR DENIAL OF APPLICATION

23 (Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

24 10. Respondent's application is subject to denial under the following section(s) of the
25 Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in
26 that, as described in paragraph(s) 8 and/or 9 above, Respondent engaged in conduct involving
27 moral turpitude, dishonesty, fraud, deceit, or corruption.

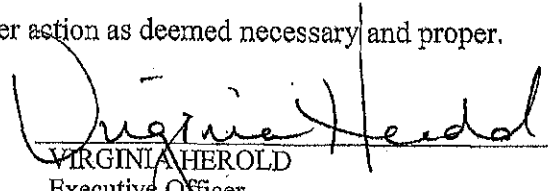
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PRAYER

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 Ka'Mesha Staples to be a pharmacy technician;
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/24/11



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

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