

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

In the Matter of the Statement of Issues Against:

Case No. 4052

ANGELA LYNN KOLAKOWSKI

5129 Northland Drive

Modesto, CA 95357

Pharmacy Technician Applicant

OAH No. 2011080497

Respondent

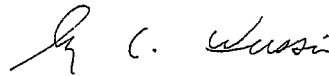
DECISION AND ORDER

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 25, 2012.

It is so ORDERED on May 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
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In the Matter of the Statement of Issues
Against:

ANGELA LYNN KOLAKOWSKI

Modesto, California 95357

Respondent.

Case No. 4052

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PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 16, 2012, in Sacramento, California.

Anahita S. Crawford, Deputy Attorney General, represented Virginia K. Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Angela L. Kolakowski represented herself.

The record was closed and the matter was submitted on March 16, 2012.

FACTUAL FINDINGS

1. Complainant made and filed the Statement of Issues in her official capacity on July 14, 2011.
2. On July 29, 2010, respondent filed her application for registration as a pharmacy technician. She disclosed in the appropriate place that she had been convicted of a crime. On February 17, 2011, the Board denied respondent's application on the basis of her criminal conviction pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (3). Respondent timely appealed the Board's decision and requested an administrative hearing in the matter.

Welfare Fraud Conviction

3. On August 29, 2007, respondent was convicted in the Superior Court of California, County of Stanislaus, in Case No. 1229294, on her plea of guilty to violating Welfare and Institutions Code section 10980, subdivision (c)(2) (fraud in obtaining aid), a misdemeanor. The court suspended imposition of sentence, placed respondent on three years probation, ordered her to perform 480 hours of community service, and pay fines and restitution. Respondent and Mathew Donovan Martin, her husband at the time, failed to report income/wages to the State agency responsible for monitoring cash aid and food stamps. As a result, respondent received approximately \$3,300 in overpayments.

4. The Stanislaus County Community Services Agency is the agency that administers aid in Stanislaus County. They prepared a Report of Investigation dated June 5, 2007, wherein they outlined the allegations and respondent's statement. According to the report, the agency received information that Mr. Martin earned income from his job but reported zero earnings, under penalty of perjury, for the period from March 1 to June 30, 2005. Mr. Martin is the biological father of respondent's two children. Both adults signed the false report. The agency did not interview Mr. Martin as his whereabouts were unknown. Case investigator Augustin Alberto interviewed respondent on May 22, 2007, at the agency office. He stated the following in his report:

[Respondent] stated that she failed to report Mathew Marton's [sic] income because at the time they were both using drugs and were heavily into their addiction. Due to their back and forth relationship and him living in Bakersfield they did not report his income from Kenai drilling. [Respondent] said that she is now clean and sober and willing to repay this overpayment as soon as possible. I showed her each quarterly report from the time period in question and she said each signature was hers. ...She signed a written statement and said she was fully responsible for her actions. She also completed promissory notes.

5. On May 22, 2007, respondent also submitted the following hand-written Statement of Fact:

Matthew and I faled [sic] to report his income at Kenine [sic] do to the back and forth of are [sic] relashoship [sic] and hem [sic] liveing [sic] in Bakersfield and are [sic] addchon [sic] to drugs. I am now cleen [sic] and willing to repay this amaunt [sic].

6. At hearing, respondent was asked about her welfare fraud conviction. She explained that her children's father, Mr. Martin, was on her aid case. She received Quarterly Eligibility Reports which she signed and forwarded to Mr. Martin to enter his job information. He completed the form indicating that he was not employed. Respondent admitted that she knew he was working. She denied knowing how he had answered the questions until she was contacted by authorities. She did not question why she was still receiving the same amount in aid with her husband working. She believed the payments

were part of a "three-month transition" period. When she wrote her statement at the agency office (Factual Finding 5), she was "only five months clean." She is still paying restitution with a balance of "under \$1,000" remaining.

Willful Cruelty to a Child Conviction

7. On February 20, 2007, respondent was convicted in the Superior Court of California, County of Stanislaus, in Case No. 1220346, on her plea of no contest to violating Penal Code section 273a, subdivision (b) (willful cruelty to a child),¹ a misdemeanor. The court suspended imposition of sentence, placed respondent on four years probation, committed her to serve 26 days in jail, ordered her to attend parenting classes, and pay fines and restitution. Probation authorized respondent to attend parenting education through Child Protective Services (CPS).

The circumstances of the offense are that on December 17, 2006, officers arrived at respondent's apartment due to an anonymous call of domestic violence and child abuse. Law enforcement had been to the residence the week before (on December 10, 2006), on a domestic violence call and had arrested respondent's live-in boyfriend, Shawn Balin. On December 17, 2006, Mr. Balin was again home and told officers that he and respondent had been arguing and she had left by car. Officer's stated that they smelled a strong odor of marijuana and could see plants through the window. They placed Mr. Balin under arrest. Respondent returned home and after making statements indicating her knowledge of the marijuana grow, she was also arrested. Her then four-year-old twins remained inside the residence while officers secured a search warrant. Drug Enforcement Agents found 325 marijuana plants in a bedroom and 74 in the garage for a total of 399 plants.

8. Law enforcement described the children and the residence as "dirty and unkempt." Some small pit bull puppies were also living inside the home. The floors throughout the residence were "saturated with dog urine and dog feces." Several "electrical hazards" were observed. The heat did not work unless two bare wires were manipulated in a wall unit. Among other things, officers seized a "glass crank pipe with residue," a glass marijuana bong, a pellet gun rifle, metal knuckles, a fixed blade knife, grow lamps, a digital scale, and other tools and indicia of drug use and sales. It was found that respondent was unlawfully converting electricity for the operation. There were no sheets on the beds, a small amount of food in the cabinets, plates of dried food and "overall filth" in the kitchen. On the floor were pills and clothes that appeared to be dirty and wet. The smell of marijuana

¹ Penal Code section 273a, subdivision (b) states: "Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child; willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor."

saturated the residence. There were no smoke detectors in the unit bases. The children were placed into protective custody and later released to their maternal grandmother.

9. Respondent attributed the dog feces to the fact that the officers detained her and Mr. Balin outside the residence for two hours awaiting a search warrant. During that time the puppies were loose in the home. She admitted there was "not a lot of food in the house." She had \$250 on her food stamp card which she was rationing out for the Christmas meal. She disagrees that her children were in an "unsanitary" environment. She conceded it was "unsafe" because of the "marijuana and the neighborhood."

Respondent's minimization as to the state of her residence including the feces, urine, lack of safe food, absence of bed linens, and overall filth, as described in the police report evidences lack of awareness and rehabilitation. It is not possible that her home descended into this state in the relatively short period of time it took for officers to obtain a warrant. Respondent is either in denial or less than candid regarding the physical state of her home, including the presence of marijuana grow operations and plants around her children.

10. After spending three months in custody, respondent was reunited with her children. They lived for one year at Laura's House, a clean and sober living community. She stated, "I learned how to live clean and not be on drugs of any sort." Her probation conditions required her to complete an 18-month drug/parenting class and test weekly for the class. She still owes probation and court fines of approximately \$2,500, due to a lack of resources. Consequently, her probation case is still open. She has not violated the terms which include obeying all laws.

Substance Abuse History

11. Respondent is 31 years of age. She first used methamphetamines at age 16 and stopped at age 17. She resumed use at age 23 shortly after meeting Mr. Balin. She abused marijuana and methamphetamines with him on a daily basis for six to nine months. She stated that she was in a "minor car accident" in early 2009. Afterward, her back "was not healing" and the muscle tension was not going away. An MRI led to a diagnosis of "reverse scoliosis." Because she experienced pain in her legs and spine when she laid down and did not want to take narcotics, she stated that her physician referred her to a cannabis doctor. She currently ingests marijuana obtained under a medical cannabis card in the form of a lozenge "jolly rancher" or brownie. The marijuana helps her nervous system to relax so that she can sleep. She stated she also does "physical therapy and stretches to help."

12. Respondent feels that drugs are "disgusting." She stated she does not like the side effects of narcotic medications and will not even take aspirin for headaches. When she is stressed, she goes to Narcotics Anonymous (NA) meetings or talks to family members. She had a sponsor from 2007 to 2009, but the individual relapsed. She has not sought a new sponsor because she is "focused on [her] school and caring for the children." She used to take drugs as a coping mechanism, especially when she was married to Mr. Martin. When she was using drugs, she described herself as "not a nice person... mean and uncaring." She feels she has grown spiritually and wants to grow financially.

Respondent's Case

13. Respondent's income consists of temporary family assistance (TANF) and social security income. Respondent has been interested in "drugs and disease" since she was 14 years old. She seeks a pharmacy technician license because she wants to see people get better. She stated that the medical field fascinates her. She obtained her associates degree in pharmacy technology at San Joaquin Valley College and is currently studying for a diploma in Business from the Institute of Technology. She will graduate in 16 weeks and has been on the Dean's list since the beginning. Her goal is to become a pharmacy manager. Her back up plan is to work in the field of business as an office manager, secretary, or in payroll.

14. Respondent said that she understands why the Board would be concerned about giving a license to a person with an addiction history. She asserted that she is not the same person that she was when using. She is referring to all drugs except marijuana. She credits treatment programs for her recovery. She feels she is "not a dishonest person." Five years have passed since her last contact with law enforcement. She seeks the chance to prove herself to the Board. She pointed to her completion of a 240 hour pharmacy externship. It involved filling, restocking, and transcribing with the help of another technician. She also obtained authorizations from medical offices, printed out paperwork from automatic refills, and readied the pharmacy every morning for the pharmacist to fill prescriptions. She had daily contact with controlled substances and denied experiencing any temptation.

15. Respondent's children are now in the third grade. Their biological father has no contact with them. He pays minimal support though there is a child support order in place. Respondent stated that her son is a "straight A" student. She is close to family and relies on her mother, grandmother, and grandfather for emotional support.

16. Respondent lives with her fiancé of five years, Shawn Balin. He is 25 years of age and has known respondent for eight years. He is one week from completing culinary school. He is currently unemployed after quitting a job at a convenience store because he "was promised a promotion and it was not given to me." For income, Mr. Balin relies on student loans and small jobs including catering "on the side," landscaping, and seasonal work as a stage carpenter.

17. Since his arrest in December 2006, Mr. Balin stated that he has gone through many changes. He volunteered to participate in parenting classes through CPS. He was originally denied the opportunity because he is not the natural father of respondent's children. After his adamant requests, CPS authorized his participation. Mr. Balin, like respondent, has a medical cannabis card which he obtained in 2008.² Unlike respondent, he

² Both respondent and Mr. Balin presented their "Medical Cannabis of Fresno - Physician Statement and Recommendation" identification cards at hearing. Copies of both cards, issued by Terri E. Brown, M.D., were admitted in evidence. The ID cards allow respondent to possess up to 60 plants and five pounds of "dried bud;" and Mr. Balin to possess up to 80 plants and six pounds of "dried bud."

rolls and smokes the cannabis leaf in their home or yard. He shared that his original qualifying medical condition was Attention Deficit Hyperactivity Disorder (ADHD) and lately, hip pain stemming from a motorcycle accident occurring four years ago.

18. Mr. Balin was convicted of felony marijuana cultivation in February 2007. He is no longer on probation. He stated that he stopped selling marijuana after that conviction because he did not have a "prescription to use" and was engaged in a program to "get off other substances" he was addicted to. Those other substances included methamphetamine, ecstasy, and LSD. He has used controlled substances since age 12. He stated his last use of drugs (excepting marijuana) and alcohol was on December 16, 2006. He admitted that he introduced methamphetamine and ecstasy to respondent at the beginning of their relationship.

19. Mr. Balin stated that he attended "Nirvana Rehabilitation," a 180-day state recognized drug treatment program and subsequently lived for 90 days in their sober living home. He has completed anger management classes for domestic violence and attended NA meetings for two years. He has a sponsor. Mr. Balin stopped attending NA after he "started feeling comfortable not using." He stated that "the urge to use drugs is not there anymore." He was not referring to marijuana, which he last smoke the night before the hearing. He stated that if he does not smoke marijuana nightly, the pain is such that he cannot walk upon waking. He does not believe his marijuana use poses a risk of relapse into methamphetamine use. He stated that marijuana use is accepted at NA, and it is "like taking a pain pill." Further, he added, "I don't consider marijuana to be a drug. I don't smoke it with my friends. I only smoke it around my fiancé in my own living space. In my eyes, I don't feel I am afflicting anyone by it." He shared that because respondent has asthma, she chooses not to smoke marijuana, but to eat lozenges or brownies.

20. Mr. Balin, in living with respondent, does not feel he poses any risk to her continued recovery or the potential misuse of her license. He stated that respondent is "very stubborn" and that her "integrity is strong." Approximately two years ago respondent kicked Mr. Balin out of their home for three months because she suspected he had relapsed on methamphetamine. He denied relapsing and showed her urinalysis tests to prove he was "clean." He does not see any risk to the children (now age nine), though he takes steps to conceal his use from them. To that end, he keeps a fan in the bedroom window so the fumes will blow outside. Also, the twins are normally in bed when he smokes his nightly dose.

LEGAL CONCLUSIONS

Applicable Laws

1. The practice of pharmacy is a profession subject to the Pharmacy Law (Bus. & Prof. Code, §§ 4000–4426, 4050). Pharmacies must be licensed by the Board, which has as its "highest priority" the "[p]rotection of the public." (Bus. & Prof. Code, §§ 4001.1, 4110.) Every pharmacy must have a "pharmacist-in-charge" who is licensed by the Board and

“responsible for the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.” (Bus. & Prof. Code, §§ 4036, 4113.) A pharmacist may be assisted by a “pharmacy technician,” who must be licensed as such and is “an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115.” (Bus. & Prof. Code, §§ 4038, 4115, subd. (e).) (see *Golden Drugs Co. v. Maxwell-Jolly* (2009) 179 Cal.App.4th 1455, 1458-1459.)

2. Business and Professions Code section 4115 states in part:

“(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.

“(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty.

“(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by pharmacist.

“(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the supervision of a pharmacist.”

3. Business and Professions Code section 480, subdivision (a) provides that the Board may deny a license if the applicant has: (1) been convicted of a crime, (2) done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit herself or another, or substantially injury another, and (3) done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subd (a) (1)-(3).) The crime must be substantially related to the qualifications, functions or duties of the business or profession for which the application is made. (Bus. & Prof. Code, § 480, (a)(3)(B).)

4. Business and Professions Code section 4300, subdivision (c), states that the board may refuse a license to any applicant found to be guilty of unprofessional conduct. The board may issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and has met all other requirements for licensure.

5. Business and Professions Code section 4301 defines unprofessional conduct to include:

(f) 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, ...or to any other person or to the public,

[¶]...[¶]

- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

[¶]...[¶]

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

6. Pursuant to Business and Professions Code 4307, subdivision (a), any person who has been denied a license or whose license has been revoked, or suspended shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee. Where a probationary license is issued, the prohibition shall remain in effect for a period not to exceed five years. Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated. (Bus. & Prof. Code, § 4307, subd. (a)(1) and (2).)

7. Pursuant to California Code of Regulations, title 16, section 1770, a crime or act shall 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.

8. The crime of fraud to obtain aid in violation of Health and Safety Code section 10980, subdivision (c)(2), is a crime of moral turpitude. (Bus. & Prof. Code, § 4301, subd. (f).) It is settled law that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. There is "no moral distinction between defrauding an individual and defrauding the government." (*In re Hallinan* (1954) 43 Cal.2d 243, 248; *Carey v. Board of Medical Examiners* (1977) 66 Cal.App.3d 538, 541.)

9. The crime of willful cruelty to a child in violation of Penal Code section 273a, is not considered a crime of moral turpitude. (*People v. Feaster* (2002) 102 Cal.App.4th 1084, 1092.) Courts have held that passive crimes do not involve moral turpitude. For example, in *People v. Sanders* (1992) 10 Cal.App.4th 1268, 1274, 13 Cal.Rptr.2d 205, the court held that child endangerment in violation of section 273a, subdivision (1), was not a crime of moral turpitude because it required wholly passive conduct. In *Castro*, the court determined that simple possession of heroin involved passive conduct and was not a crime of

moral turpitude, whereas sale of narcotics involved corruption of others and hence moral turpitude. (*People v. Castro* (1995) 38 Cal.3d 301, 317.)

10. However, the crime of willful cruelty to a child in violation of Penal Code section 273a, is substantially related to the qualifications, functions and duties of a pharmacy licensee. (Bus. & Prof. Code, § 4301, subd. (1).) The Legislature has provided in Business and Professions Code section 4046 that the practice of pharmacy is a “dynamic patient-oriented *health service* that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.” (Emphasis in original; *Murphy v. E. R. Squibb & Sons, Inc.* (1985) 40 Cal.3d 672, 679.) Further, under Penal code section 11165.7 physicians, licensed nurses, and other specified health care workers, including pharmacy professionals licensed under Division 2 of the Business and Professions Code, are “mandated reporters” with a duty to report reasonable suspicion of child abuse or neglect. As such, respondent’s crime and acts of child abuse and neglect as set forth in Factual Findings 7 through 9, are substantially related to the license she seeks.

Cause for Denial

11. Cause for denial of respondent’s application for a pharmacy technician license exists based on her conviction for fraud in obtaining aid. (Welf. & Inst. Code, § 10980, subd. (c).) (Factual Findings 3 through 6.) The crime involved moral turpitude, dishonesty, fraud, and deceit with intent to substantially benefit respondent and is substantially related to the qualifications of the license she seeks pursuant to Legal Conclusion 8. Further, the act if done by a licentiate would be grounds for discipline. (Bus. & Prof. Code, §§ 480, subs. (a)(1)-(3); 4300, subd. (c); 4301, subs. (f) & (l).; and Cal. Code Regs., tit. 16, § 1770.)

12. Cause for denial of respondent’s application for a pharmacy technician license exists based on her conviction for willful cruelty to a child. (Pen. Code, § 273a, subd. (b).) Her acts constituted abuse and neglect of her two children over a period of days, not hours. (Factual Findings 7 through 10.) Her crime was substantially related to the qualifications, functions, and duties of the license she seeks pursuant to Legal Conclusion 10. (Bus. & Prof. Code, §§ 480, subs. (a)(1) & (3); & 4301, subd. (l); in conjunction with Cal. Code of Regs., tit.16, § 1770.)

13. Cause for denial of respondent’s application for a pharmacy technician license exists based on her acts of consumption of controlled substances and dangerous drugs. (Factual Findings 11 and 18.) Respondent used marijuana, methamphetamine, and other drugs to the extent and in a manner as to be dangerous to herself, her children, and the public. Such acts constitute unprofessional conduct and would be grounds for revocation if done by a licensed professional. (Bus. & Prof. Code, §§ 480, subd. (a)(3); 4300, subd. (c); & 4301, subd. (h).)

Rehabilitation

14. It is well settled that the state has broad police powers in regulating the administering of certain types of drugs by the health professions. (*People v. Privitera* (1979)

23 Cal.3d 697, 730.) Because harm to others is readily foreseeable, the state has a profound interest in maintaining medical standards and in protecting health and life. This justifies the testing and licensing of doctors, the giving of medical advice, the regulation of pharmaceuticals, and the licensing requirements for pharmacists and other dispensers of drugs. (*Ibid.*)

15. The department has developed guidelines for use in evaluating the rehabilitation of an applicant for issuance of a license, which are set forth in California Code of Regulations, title 16, section 1769, subd. (a). Factors to consider include the nature and severity of the act or offense, evidence of any subsequent crimes or misconduct, the time that has elapsed since commission of the crime/act, compliance with the terms of probation, and evidence of rehabilitation.

16. In consideration of these guidelines, respondent was convicted of two crimes in 2007, with the underlying misconduct occurring in 2005 and 2006. Approximately four years have passed since her prosecution. She admits that her substance abuse affected her ability to provide a safe and healthy home for her children and her complicity in filing false income statements. She is still on probation due to not having fully paid her court fines and restitution in both cases. (Factual Findings 6 and 10.)

Of concern is the fact that after her one year stay at a clean and sober living environment, respondent chose to resume living with Mr. Balin, a person deeply associated with her addiction lifestyle. Mr. Balin perpetrated domestic violence against her, cultivated and sold marijuana out of the home where she lived with her two children, and by his own admission, enticed her to use dangerous street drugs. Both parties obtained medical cannabis cards after their arrest and conviction in 2007. They presented absolutely no medical evidence that they are in need of mind altering pain relief. Mr. Balin stated that he originally obtained his marijuana "prescription" for ADHD, but presented nothing to substantiate his claim that adult ADHD is relieved by smoking weed. It is curious that Mr. Balin continues to smoke loose leaf marijuana when alternatives are available. He smokes outside or uses a window fan to mitigate the fumes. However, Mr. Balin is aware of respondent's asthma and her children are approaching adolescence. As such, his conduct disregards the welfare of the children and poses health and rehabilitation risks to respondent. That respondent allows the conduct is a matter of serious concern, and demonstrates a lack of appreciation of the issues associated with substance abuse.

17. The duties and responsibilities of a pharmacy technician are important and require a high degree of trust, integrity, and sound judgment. Given the entire weight of evidence produced in the record, respondent has not met her burden to establish that she is presently safe to hold the license she seeks.

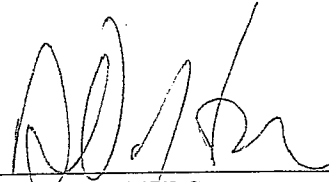
Conclusion

18. All of the evidence presented in this matter has been considered. Legal grounds for denial exist pursuant to Legal Conclusions 11 through 17.

ORDER

Respondent Angela Lynn Kolakowski's application for a Pharmacy Technician Registration Number is DENIED.

DATED: April 24, 2012



DIAN M. VORTERS
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:

Case No. 4052

12 **ANGELA LYNN KOLAKOWSKI**
13
14 **5129 Northland Drive**
Modesto, CA 95357
15 **Pharmacy Technician Registration**

STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy.
- 22 2. On or about July 29, 2010, the California State Board of Pharmacy received an
23 application for a/an Pharmacy Technician Registration from Angela Lynn Kolakowski
24 (Respondent). On or about June 2, 2010, Angela Lynn Kolakowski certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on February 17, 2011.

27 //
28 //

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

17
18
19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
20 abetting the violation of or conspiring to violate any provision or term of this chapter
21 or of the applicable federal and state laws and regulations governing pharmacy,
22 including regulations established by the board or by any other state or federal
23 regulatory agency.

24 6. Section 4060 of the Code states:

25
26 No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

CONTROLLED SUBSTANCE AT ISSUE

7. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety
Code section 11054, subdivision (d)(13).

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Convictions)**

3 8. Respondent's application is subject to denial under section 480, subsection (a)(1) in
4 that on or about February 20, 2007, in a criminal proceeding entitled *People v. Angela Lynn*
5 *Kolakowski* in Stanislaus County Superior Court, Case Number 1220346, Respondent was
6 convicted by plea of nolo contendere in Penal Code section 273a, subsection (b) (willful cruelty
7 to a child), a misdemeanor. Respondent was sentenced to 48 months probation and 26 days in
8 jail. The circumstances are as follows:

9 a. On or about December 17, 2006, officers from the Stanislaus County Sheriff's
10 Office searched Respondent's and her boyfriend's residence pursuant to a Narcotics Search
11 Warrant. Inside the residence, officers discovered and seized 74 mature marijuana plants from a
12 converted garage. An additional 325 immature marijuana plants were located in the northwest
13 bedroom. Respondent acknowledged knowing about the mature marijuana plants and stated that
14 she did not have a medical marijuana card. Respondent admitted to smoking marijuana, with her
15 last use being one week prior.

16 Respondent's two minor children were also located inside the residence. The
17 residence contained dog feces throughout, electrical hazards and contained materials related to
18 marijuana grow. The residence contained rotting food and little to no food for the children to eat.
19 Respondent was arrested and her children were placed into protective custody.

20 9. Respondent's application is subject to denial under section 480, subsection (a)(1) in
21 that on or about August 29, 2007, in a criminal proceeding entitled *People v. Angela Lynn*
22 *Kolakowski* in Stanislaus County Superior Court, Case Number 1229294, Respondent was
23 convicted by plea of nolo contendere in violation of Health and Safety Code section 10980,
24 subsection (c)(2) (fraud to obtain aid), a misdemeanor. Respondent was sentenced to 36 months
25 probation. The circumstances are as follows:

26 a. On or about and between March 2005 through June 2005, Respondent reported
27 \$0 in income on her quarterly eligibility report for aid to the Stanislaus county Community
28 Services Agency when in fact, her boyfriend had received \$6,564 in income from his employer.

1 Respondent acknowledged her responsibility, and stated that her drug addiction was a factor in
2 the misrepresentation. Respondent was ordered to pay back the aid she received for that quarter.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Dishonest Acts)**

5 10. Respondent's application is subject to denial under section 480, subsection (a)(2) in
6 that on or about and between March 1, 2005 to June 30, 2005, Respondent fraudulently obtained
7 government aid by placing untrue statements on her application for such aid, as more fully set
8 forth in paragraph 9, above.

9 **THIRD CAUSE FOR DENIAL OF APPLICATION**

10 **(Acts Warranting Discipline if Licensed)**

11 11. Respondent's application is subject to denial under section 480, subsection (a)(3)(A)
12 as described in sections 4301, subsection (f) (dishonest acts), (g) (knowingly making a false
13 statement), (l) (criminal conviction) and (o) (violation of laws), as more fully set forth in
14 paragraphs 8-10, above.

15 12. Respondent's application is subject to denial under section 480, subsection (a)(3)(A)
16 as described in section 4301, subsection (j) in that Respondent unlawfully possessed the
17 Controlled Substance, Marijuana, as more fully set forth in paragraph 8, above.

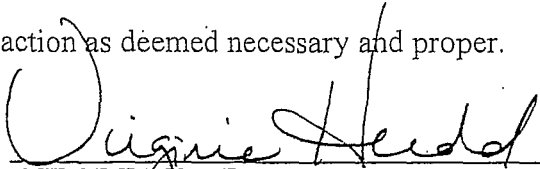
18 **PRAYER**

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

21 1. Denying the application of Angela Lynn Kolakowski for a Pharmacy Technician
22 Registration;

23 2. Taking such other and further action as deemed necessary and proper.

24 DATED: 7/14/11

25 
26 VIRGINIA K. HEROLD
27 Executive Officer
28 California State Board of Pharmacy
State of California
Complainant

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