

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

In the Matter of the Statement of Issues Against:

Case No. 4127

**DUY LAM**

Applicant

Respondent.

**DECISION AND ORDER**

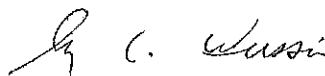
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 26, 2012.

It is so ORDERED on October 25, 2012.

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:

DUY QUANG LAM,  
Sacramento, CA 95829

Respondent.

Case No. 4127

OAH No. 2011120486

**PROPOSED DECISION**

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on August 2, 2012.

Karen R. Denvir, Deputy Attorney General, represented complainant, Virginia K. Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

There was no appearance by or on behalf of Duy Quang Lam (respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on August 2, 2012.

**FACTUAL FINDINGS**

1. Respondent signed an Application for Registration as a Pharmacy Technician on September 25, 2009. The Board denied the application on April 28, 2011, and respondent filed a timely appeal.

2. Complainant, acting solely in her official capacity as the Executive Officer of the Board, filed the Statement of Issues on or about November 1, 2011, seeking to deny respondent's application on the grounds that he has two criminal convictions. The Statement of Issues was served on respondent by certified and first class mail, and he returned the Domestic Return Receipt on December 5, 2011.

3. This matter was called on the date and at the time and location specified in the Notice of Hearing. Respondent did not appear, no one appeared on his behalf, and the hearing proceeded as a default pursuant to Government Code section 11520.

#### *Criminal Convictions*

4. On June 28, 2010, in the Superior Court of California, County of Placer, Case No. 72-5838, in the matter entitled *People v. Duy Quang Lam*, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 487, subdivision (a), (grand theft), a felony. Imposition of sentence was suspended, and respondent was placed on five years formal probation, upon the following terms: serve 60 days in jail, with credit for time served of 14 days; pay fines and fees of \$2,350; enter and continue an education, psychological, psychiatric, drug, alcohol, or other rehabilitation program; seek and maintain gainful employment; submit to drug, narcotic, or alcohol testing; submit person or property to search and seizure by law enforcement; do not own or have in possession any deadly weapon; do not annoy or harass the victims; abstain from all gambling activities; do not possess or remain in the presence of one who possesses any master key, lock picks, dent-puller, slim-jim, slide hammer, or other device known to be an auto theft or burglary tool; and other standard terms and conditions.

5. The facts and circumstances of the conviction are that, on January 23, 2009, respondent stole a snowboard at Northstar Ski Resort. He listed the snowboard for sale on Craigslist. Approximately three weeks after the theft, the owner recognized his snowboard as described in the Craigslist ad. The owner called respondent and set up a meeting. When he met respondent, respondent showed him the snowboard. The owner told respondent that the snowboard was his, and that if respondent gave his snowboard back, he would not call law enforcement. Respondent fled in his car with the snowboard. The owner saw respondent's license plate number, which he gave to the sheriff's department. The deputies located respondent at his home, and searched his home pursuant to a search warrant. Respondent told the deputies that he purchased the snowboard on Craigslist for \$100, and tried to make a profit by re-selling the snowboard for \$250. Respondent denied having other snowboards in the house. The deputies found two more snowboards, which respondent later admitted were also stolen, and which he also intended to sell on Craigslist. Respondent stated that he was sorry, and that he stole the snowboards because he was a student and needed to make some money.

6. On March 1, 2010, in the Superior Court of California, County of Orange, Case No. 09NF3730, in the matter entitled *People v. Duy Quang Lam*, respondent was convicted, upon pleas of guilty, of violating Penal Code sections 664, subdivision (a)/459/460, subdivision (a), (attempted residential burglary), and Penal Code section 496, subdivision (a), (receiving stolen property), both felonies. Imposition of sentence was suspended, and respondent was placed on formal

probation for three years, upon the following terms: serve 180 days in jail, with credit for time served of 64 days; pay \$643 in fees and fines; submit person and property to search and seizure by law enforcement; cooperate with probation officer with any plan for psychiatric, psychological, alcohol and/or drug treatment or counseling; seek training, schooling or employment; do not own, use or possess any type of dangerous or deadly weapon; do not associate with parolees or convicted felons; and other standard terms and conditions.

7. The facts and circumstances of the convictions are that on December 28, 2009, at approximately 11:30 a.m., respondent went to a residence in southern California and was observed by the homeowner opening a sliding glass door in the back of the residence. The homeowner had been loading his racing pigeons in his car, and when he walked into the backyard, he asked respondent, "Can I help you?" Respondent fled over a side fence, and was later found by police officers hiding under a palm tree across the street. Respondent told the officers that he was driving around and stopped off in Brea, where he saw a male Hispanic passing out flyers. Respondent stopped and asked the male for some of the flyers. Respondent parked his car in a neighborhood and knocked on the door of a residence to see if anyone was home. If someone answered the door, respondent would give the resident a flyer. Respondent stated that he was looking for open windows and doors so that he could get inside and see what he could steal.

Days earlier, respondent borrowed his brother's car and drove to southern California to purchase another car. Respondent stopped at local casinos and lost most of his money. Respondent began to worry because he did not want to go back home with nothing, so he began to walk through parking lots checking car doors left unlocked. He found a few unlocked cars, and admitted to stealing two credit cards and a few calculators and school books. He used a stolen Discover card at a gas station to buy gas. He also used the Discover card at a casino and attempted to obtain cash, but did not go through with it when he read the receipt stating that he needed his identification card in order to obtain the cash. Respondent stated that he attempted to use another stolen Visa card at a gas station, but it was declined. Respondent then drove around and found the Hispanic male passing out flyers. When he was caught after the attempted burglary, respondent told the officers that he had been stealing items in order to sell them, in an attempt to earn back some of the money he lost to gambling so that he could buy a car.

Respondent admitted to the officers that he was desperate, he did not want to disappoint his family, and that he had a bad gambling problem.

#### *Factors in Aggravation, Mitigation, and Rehabilitation*

8. Pharmacy technicians assist pharmacists with filling prescriptions by pulling the proper medication from the shelf, counting or measuring the proper amount of medication to be dispensed, and filling the container with the medication.

While a pharmacist must verify the accuracy of the pharmacy technician's work, pharmacists rely on pharmacy technicians to have a certain level of maturity, responsibility, integrity, and good judgment and to perform their duties competently. Also, consumers must have confidence that their prescriptions are properly filled.

9. Respondent is 26 years old. He graduated from Foothill High School in 2003.

10. Respondent has two very serious criminal convictions (Findings 4 to 7) wherein the underlying acts occurred within a year of each other. His March 2010 residential burglary and receipt of stolen property convictions were the result of a crime spree in December 2009, after respondent lost his money gambling in southern California. Despite being on probation for his March 2010 conviction, respondent committed another crime and stole three snowboards on separate occasions. Respondent will be on formal probation until June 2015.

11. In his letter to the Board requesting a hearing in this matter, respondent wrote:

Although my convictions will forever adulterate my credibility, and deservedly so, I've accepted it as a catastrophic blessing. Not to be redundant, but the time I spent in confinement made me increasingly lucid. I became ascetic, realized another transgression will permanently obliterate by childhood dream of becoming a pharmacist despite what I will be able to accomplish in school in the immediate future. That fear will forever be engraved in my conscience; thus, preventing me from falling into future execrable lapses ...

I implore you to grant me this opportunity for I am capable of being a law abiding individual as evident [sic] by my abstinence from committing even the smallest infraction since December 28, 2009 ...

I'm thankful and will embrace this very last opportunity like an individual who's fortunate to make it dockside after being tossed in deep water wrapped in canvas and chains. I will behave like a paragon to atone for my deplorable actions and to cling onto my childhood [sic] dream for I've learned from the astute Aristotle that "education is an ornament in prosperity, a refuge in adversity and a provision in old age." I solemnly hope that my contriteness, sedulous work ethics and faith will be enough to turn my childhood dream into reality ...

Respondent admitted that his credibility and trustworthiness are at issue in his ability to hold a pharmacy technician license. Unfortunately, he was not present at the hearing to further explain how he has atoned for his crimes, and what he would do to prevent such events from happening again.

12. No other evidence was offered in extenuation, mitigation, or rehabilitation.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480 allows the Board to deny an application for a license if the applicant has been convicted of a crime. (Bus. & Prof. Code, § 480, subd. (a)(1).)

2. The Board also may deny an application when the applicant has done any act involving dishonesty, fraud, or deceit with the intent of benefiting himself. (Bus. & Prof. Code, § 480, subd. (a)(2).)

3. 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 business or profession for which application is made. (Bus. & Prof. Code, § 480, subd. (a)(3)(B).)

4. For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, 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 manner inconsistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770.)

#### *Substantial Relationship*

5. The underlying acts of each conviction establish that respondent's convictions are substantially related to the qualifications, functions, and duties of pharmacy technician. (Findings 4 to 7.) Each of those acts demonstrates that he lacks respect for, and is unwilling or unable to comply with, laws designed for the protection of the public. Furthermore, each reflects poorly on his maturity, responsibility, integrity, trustworthiness, and good judgment, qualities which are essential to his profession, and tend to undermine public confidence in and respect for pharmacy technicians. (See *Griffith v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771 [analyzing factors used to determine whether a crime is substantially related to the qualifications, functions, and duties of particular profession].)

### *Cause for Denial*

6 Cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 480, subdivision (a)(3)(B), in that respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician. Each of the convictions described in Findings 4 and 6 constitute separate causes for denying respondent's application pursuant to Business and Professions Code section 480, subdivision (a)(1). (Legal Conclusion 3.)

7. Cause exists to deny respondent's application pursuant to Business and Professions Code section 480, subdivision (a)(2), in that respondent has committed acts of dishonesty, fraud, and deceit with the intent to substantially benefit himself. Respondent stole snowboards with the intent to sell them and make a profit for himself, he attempted to burglarize a home, and he stole credit cards with the intent to use them for his benefit.

### *Rehabilitation*

8. The Board has adopted rehabilitation criteria which are to be considered when deciding whether to deny an application for a license. (Cal. Code Regs., tit. 16, § 1769.) The criteria are:

- 1) The nature and severity of the act(s) or offense(s) 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 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) referred 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 appellant.
- 5) Evidence, if any, of rehabilitation submitted by the applicant.

9. Respondent's acts were serious, in that he acted without regard for the property of others, and stole items with the intent to benefit himself. While on probation for his March 2010 conviction, he committed another crime which led to his June 2010 conviction. Respondent's convictions are recent, having occurred only two years ago. He will be on probation until June 2015. No evidence was presented to show that respondent has complied with any terms of his probation, restitution, or any other sanctions lawfully imposed against respondent. For these reasons, and

those set forth in Findings 8 to 12, respondent has failed to establish that he is sufficiently rehabilitated that it would be in the public's interest to issue him a pharmacy technician's license, even on a probationary basis.


*Conclusion*

10. When all the facts and circumstances are weighed and balanced, it is contrary to the public interest to grant respondent a license at this time.

ORDER

Respondent Duy Quang Lam's application for a pharmacy technician's license is DENIED, by reason of Legal Conclusions 6 and 7, separately and collectively.

DATED: August 7, 2012

  
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DANETTE C. BROWN  
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. 4127

12 **DUY QUANG LAM**  
13 **9935 Firestone Drive**  
14 **Sacramento, CA 95829**

**STATEMENT OF ISSUES**

15 **Applicant for Pharmacy Technician License**

16 Respondent.

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 October 5, 2009, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a/an Pharmacy Technician License from Duy Quang Lam  
24 (Respondent). On or about September 25, 2009, Duy Quang Lam 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 April 28, 2011.

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

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Criminal Convictions)**

5 5. Respondent's application is subject to denial under section 480(a)(1), in that he was  
6 convicted of the following crimes that are substantially related to the qualifications, functions or  
7 duties of the profession for which he is applying:

8 a. On or about June 28, 2010, in a criminal proceeding entitled *People v. Duy Quang*  
9 *Lam* in Placer County Superior Court, Case Number 72-5838, Respondent was convicted by plea  
10 of nolo contendere of violating Penal Code section 487(a) (grand theft), a felony. The  
11 circumstances surrounding the case are that Respondent was arrested for stealing three  
12 snowboards from Northstar Ski Resort. During the investigation, Respondent admitted to police  
13 officers that he stole the snowboards and tried to sell them on Craigslist.com to make money.

14 b. On or about March 1, 2010, in a criminal proceeding entitled *People v. Duy Quang*  
15 *Lam* in Orange County Superior Court, Case Number 09NF3730, Respondent was convicted by  
16 pleas of guilty of one count of violating Penal Code section 664(a)/459/460(a) (attempted  
17 residential burglary) and one count of violating Penal Code section 496(a) (receiving stolen  
18 property), both felonies. The circumstances are that Respondent was arrested after he was  
19 observed attempting to enter a residence, and a subsequent search of Respondent's vehicle  
20 revealed stolen credit cards belonging to two separate individuals. During the investigation,  
21 Respondent admitted to police officers that he was attempting to enter the residence to steal items  
22 from inside, and he also admitted that he had stolen the two credit cards found in his car and had  
23 attempted to use them illegally.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Act Involving Dishonesty, Fraud or Deceit)**

26 6. Respondent's application is subject to denial under Code section 480(a)(2), in that  
27 Respondent committed acts involving dishonesty, fraud or deceit with the intent to substantially  
28 benefit himself as set forth in paragraphs 5, above.

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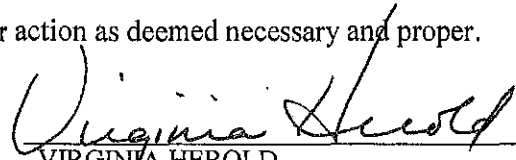
PRAYER

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 Duy Quang Lam for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

11/1/11



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

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