

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

In the Matter of the Statement of Issues
Against:

DUNBAR THEOPHILUS WATSON, Jr.,

Applicant for Pharmacy Technician
License,

Respondent.

No. 4896

OAH No. 2014010712

FINAL DECISION AFTER REJECTION OF PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings (OAH), heard this matter on June 18, 2014, in Oakland, California.

Deputy Attorney General Jonathan D. Cooper represented complainant Virginia Herold, Executive Officer, the Board of Pharmacy, Department of Consumer Affairs.

Dunbar Theophilus Watson, Jr., was present for the hearing; but, he was not otherwise represented.

The record was held open in order to afford respondent an opportunity to file and serve copies of documents to which he referred during the hearing, but which he did not possess at the hearing. Also the record was held open to permit complainant to file a written response to the documents filed and served by respondent. On June 23, 2014, respondent filed with OAH a list of continuing education courses taken by him during late 2013. Respondent's list was marked as exhibit "A," and received as administrative hearsay¹ to supplement and explain respondent's hearing testimony. Also, respondent filed a letter that was marked as exhibit "B," and received as argument. And on June 23, 2014, complainant, through Deputy Attorney General Cooper, filed two letters, which were marked as exhibits "9a" and "9b." The letters were received as argument.

On June 23, 2014, the parties were deemed to have submitted the matter, and the record closed.

¹ Government Code section 11513, subdivision (d).

Amendment to Statement of Issues

At the hearing of this matter, complainant's motion to amend the Statement of Issues was granted so that the Second Cause for Denial of Application (criminal conviction) was deleted, redacted or otherwise eliminated from complainant's pleading, which underpins the subject administrative adjudication proceeding regarding respondent Dunbar Theophilus Watson, Jr.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board") on July 22, 2014, and after due consideration thereof, the Board declined to adopt said proposed decision and thereafter on August 20, 2014 issued an Order of Non-adoption of Proposed Decision, and subsequently on September 29, 2014 issued an Order Fixing Date for Submission of Argument. Written argument have been timely received from complainant, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

Issue

Must respondent's application for licensure, through registration, as a pharmacy technician, be denied because of: (i) a disciplinary action during 2001 brought by the Colorado State Board of Pharmacy against the license issued to respondent to serve as a pharmacist in that state; and/or (ii) respondent's unlawful possession/use of controlled substances?

FACTUAL FINDINGS

1. On November 4, 2013, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereafter, "board"), in her official capacity, filed Statement of Issues No. 4896 against respondent Dunbar Theophilus Watson, Jr. (respondent). Respondent filed a timely Request for Hearing.

2. On September 27, 2012, respondent signed and certified an application for registration as a Pharmacy Technician. He submitted the application to the board, which received the document on October 8, 2012. On May 17, 2013, the board's assistant executive officer sent respondent a letter denying the application for licensure. On July 11, 2013, respondent wrote a letter appealing the denial of his application to acquire registration as a pharmacy technician.

Disciplinary Action Against Pharmacist License Previously Held by Respondent

- I. LICENSURE DISCIPLINARY ACTION BY ANOTHER STATE'S LICENSING AGENCY

3. On June 15, 1999, the Colorado State Board of Pharmacy issued an order of discipline against Pharmacist License number 13136, which had been issued in 1990 to respondent. The disposition of the Colorado state agency's action involved a stay of license revocation whereby respondent was placed on a five-year period of probation, which included a term of actual suspension of licensure for 180 days. During the period of probation, while he held a restricted license, respondent was required to comply with certain terms and conditions, including taking examinations in two distinct areas.

4. The Colorado State Board of Pharmacy based the 1999 disciplinary action against respondent's pharmacist license because of the following:

a. On March 20, 1998, police in Denver County, Colorado, arrested respondent for unlawful possession of cocaine, a schedule II controlled substance under Colorado state law.

b. After pleading guilty on June 8 1998, to that state's class 4 felony violation for unlawful possession of cocaine, respondent was admitted into a three-year deferred judgment and sentence program. Under an order that he participate in a drug treatment program requiring that he submit to random urinalysis, respondent missed urinalysis testing and also he was determined to have positive urinalysis while in the court prescribed treatment program.

c. After the March 20, 1998, arrest for possession of cocaine, respondent self-reported his circumstances to the Colorado State Pharmacist Recovery Network and the Peer Assistance Services, Inc. program. But, respondent failed to timely participate in the organization's counseling programs. Respondent failed to "follow through" with recommendations by the Colorado State Pharmacist Recovery Network and Peer Assistance Services program. And he failed to apply to the Rehabilitation Evaluation Committee in order to gain actual admission into the Colorado State Pharmacist Recovery Network.

d. In September 1998, which was six months after his arrest for unlawful possession of cocaine and three months after his felony plea that allowed him to gain a deferred judgment order in a Colorado state court, respondent gave a positive urine test for cocaine.

e. In an application during February 1999 for admission into the Colorado State Pharmacist Recovery Network, respondent acknowledged on a form document that he "excessively uses controlled substances (cocaine)." The excessive drug use caused the "impaired functioning" of respondent.

5. On February 27, 2001, the State Board of Pharmacy, in case number PH 2000-7, issued a Final Agency Order revoking respondent's license to practice as a

pharmacist in the State of Colorado. The Colorado State board's final order followed a "disciplinary hearing by default," which was conducted on a date between October 17, 2000, and January 9, 2001.

II. UNLAWFUL POSSESSION/USE OF CONTROLLED SUBSTANCES

6. At least from 1998 until approximately 2001, respondent administered to himself a dangerous drug to the extent or in a manner as to be dangerous or injurious to himself. Respondent's misconduct violated laws regulating controlled substances in the State of Colorado.

7. Further to the immediate foregoing factual finding, on March 20, 1998, police in Denver County arrested respondent for unlawful possession of cocaine, a schedule II controlled substance under Colorado law.

8. Further as to Factual Finding 6, in an application during February 1999 into the Colorado State Pharmacist Recovery Network, respondent acknowledged that he "excessively use[d] controlled substances (cocaine)."

Respondent's Evidence

MATTERS IN EXTENUATION

9. At the hearing of this matter, respondent was credible and persuasive that his recreational use of cocaine never impaired his functioning as a pharmacist. He was believable when he asserted at the hearing of the matter that when he sought assistance from the Colorado State Pharmacist Recovery Network, he did not carefully read and fully comprehend the form document upon which he affixed his signature. Respondent asserts that the document as signed by him in 1999 incorrectly stated that respondent had engaged in excessive drug use that "impaired [his] functioning."

MATTERS IN MITIGATION AND RESPONDENT'S BACKGROUND AS A PHARMACIST

10. In 1989, respondent graduated from the Texas Southern University School of Pharmacy with a Bachelor of Science degree.

11. Respondent was first licensed as a pharmacist by the State of Texas. Because he moved to the State of Colorado in 1989 or early 1990, respondent never actually practiced as a pharmacist in the State of Texas. The license issued by the State of Texas lapsed in approximately 1996, when respondent did not renew the license.

12. In approximately 1990, respondent acquired licensure as a pharmacist by the Colorado State Board of Pharmacy. As set forth above, that license was revoked in approximately February 2001.

13. While working as a pharmacist in the State of Colorado, respondent was employed at the Fitzsimmons Army Medical Center (Fitzsimmons), which was located in Denver, Colorado. As a civilian pharmacist, respondent worked at the U.S. Army medical treatment center for eight years until approximately 1997 or 1998. His employment ended when Fitzsimmons was closed by order of the Department of Defense Base Closure Act's directives.

14. After his federal government employment ended, respondent was employed as a pharmacist by the Francis Street Pharmacy in Longmont, Colorado. (That city is approximately 40 miles outside of Denver, Colorado.)

15. From approximately 1998 until approximately late 2001, respondent was a co-owner of a restaurant called the York Street Cafe, which was located in Denver, Colorado. It was respondent's interest in being an entrepreneur in the restaurant business that influenced respondent to cease work as a pharmacist. At that point in time, he decided to "walk away from his practice as a pharmacist" (Respondent's choice not to take and pass the board's prescribed examination in "jurisprudence" resulted in the revocation action against his pharmacist license.)

16. Respondent has been married twice. His first marriage spanned 14 years and ended in divorce in approximately 2001. Respondent was married for a second time from 2010 until a divorce became final in April 2014.

17. From his first marriage, respondent produced one child, a son who is now 22 years of age.

MATTERS IN REHABILITATION

18. Respondent is 54 years old. He is a mature, thoughtful and very sober individual.

19. Respondent is forthright and candid regarding his past history of drug use. On an attachment to his September 2012 application for licensure, respondent wrote, "my pharmacy license was suspended on [June 15] 1999 because of my arrest for cocaine possession." Respondent poignantly proclaims that his past conduct, involving use of a controlled substance, caused him great loss and that he has "paid a heavy price" for his acts that occurred around 1998 and 1999.

20. Respondent compellingly proclaimed at the hearing of this matter that he was never convicted of a crime.

Respondent persuasively asserts that he completed the court-prescribed drug diversion program over a span of approximately three years. In either 2002 or 2003, a Denver, Colorado court issued an order recognizing respondent had successfully

completed a drug diversion program, and that the court would not enter a conviction against respondent for the unlawful possession of the controlled substance cocaine.

21. After he ended his efforts to operate a restaurant business in downtown Denver, Colorado, respondent worked, for approximately two years, as a sales agent for "chemical sales" for a company called Chemicals Unlimited LLC. That employment, as a "sales rep/delivery driver," took place in the State of Colorado.

22. In approximately 2003 or 2004, respondent began working as a recruiter of students for Westwood College, which is a nationwide, for-profit educational business in the State of Colorado. Respondent then worked for High Tech Institute whereby he recruited students to attend a subsidiary educational institution called Cambridge College, which is located in Aurora, Colorado. He worked for High Tech Institute from approximately 2005 until 2008.

23. Cambridge College dissolved so that respondent was laid off. After a nine-month period of unemployment during 2008, respondent secured employment for a political campaign as a community liaison until an election in November 2010.

Respondent held odd jobs through 2011 and most of 2012.

24. In 2012, respondent moved to the State of California.

25. Respondent's first employment position in California was as a student recruiter for Heald College. He worked for that for-profit college for about two years, until late 2013. Early this year, 2014, respondent began working for Sylvan Learning Center (Sylvan).

Respondent is currently working for Sylvan; but the employment is limited as he averages approximately 20 hours per week.

26. Although respondent's first wife took the couple's son away from respondent's home in Colorado in about 2001, so that he was deprived of contact with his only child, respondent was able to reconcile with his son. When his son was in high school, which was during 2008, the boy returned to respondent's household. Respondent was the sole custodial parent of his son through the last three years of high school. Respondent provided support and guidance for his son until the teenager graduated from high school. Respondent's son accompanied respondent for the move in 2012 to Northern California. The teenager lived with respondent until approximately August 2013 when his son enrolled in a college and moved to the State of Texas.

27. Respondent's son continues to be a college student enrolled in a university in Texas. Respondent talks, via telephone, with his son on a daily basis, including within hours of the commencement of the hearing in this matter. Respondent

contributes to his 22-year-old son's college expenses from the limited income that he is able to generate.

28. Respondent has family members who live in the San Francisco Bay Area. In particular, he has an aunt and a cousin, a local media broadcaster, who provide him with significant familial support and encouragement.

29. Respondent resides in a house, which is located in Hayward. And he is self-sufficient; but, he shares the house with acquaintances.

30. Respondent consumes alcoholic beverages very sparingly. He recalls taking a drink at his son's high school graduation in 2011. And when he moved to Northern California in 2012, he had a social drink with his fraternity brothers at an arrival celebration. Respondent has never had a record of abusing alcoholic beverages.

SPECIFIC MATTERS PERTAINING TO RESPONDENT RECOVERY FROM DRUG ABUSE

31. At the hearing of this matter, respondent gave a vivid account of his use of drugs in the late 1990s until approximately 2001. He persuasively claimed that he was a recreational cocaine user. Respondent was credible when he denied that the use of cocaine ever impacted his performance as a pharmacist.

32. Complainant provided no evidence that respondent has ever been the subject of an investigation or an allegation of unlawfully procuring of drugs from a pharmacy or using drugs within the confines of a pharmacy.

33. During the early years of his progress toward recovery, respondent volunteered with his fraternity in a project to assist persons with health issues to secure low costs medical services. He participated in "community affairs" services from 2000 until 2012 for his fraternity and other non-profit entities.

34. For no other reason other than to help others who have ongoing drug addiction problems, in recent years respondent has volunteered his time and energy in drug counseling programs. He views himself as a mentor to "young people" with an aim of helping those individuals to "rebuild" previously broken lives. Also he has participated in YMCA youth programs.

35. Respondent regularly attends the Harbor Light Celebrate Recovery program every night at a facility in Hayward. For his own gratification, beginning in August 2013 respondent entered a nine-month-long substance abuse Twelve-Step-like program titled "Celebrate Recovery." Also he participated in another program called Cleansing Stream, which was a religious oriented counseling event. Every Friday evening, respondent attends meetings oriented around Alcoholic Anonymous principles.

36. In a letter, dated June 23, 2013, respondent makes an ardent statement that he does not have cravings for drug use. He credibly sets forth in his recent written communication that he does not "entertain thoughts" for drug use because those notions "are not beneficial" to him.

37. Respondent is an active church participant. He is a member of Zion First Church of God In Christ, which is located in Oakland. He has been a member of that church for approximately two and one-half years.

Respondent attends religious retreat programs such as the "Iron Sharpens Iron" program given to approximately 700 men in a program presented by Reverend James W. Steiner of the Men's Ministry Catalyst.

Respondent is a frequent attendee of a second church called Heart of the Bay Church in Hayward. He joined that church during mid-2013.

Once each month, respondent accompanies an elderly aunt to her church in Mountain View, California.

Other General Matters in Rehabilitation

38. At the hearing of this matter, respondent presented seven letters, which were written by individuals² who respect and admire respondent.

The letters convey a range of commentary observations and positive assessments pertaining to respondent. Respondent is described in the letters as: "a community activist... a man of integrity ... [who] has worked tirelessly to get men of color to pay closer attention to their health through various preventative health efforts [who] has organized health fairs, blood drives [and whose experience with a license revocation] remains a source of intense regret and embarrassment for him" Another author notes that respondent has "grown from his challenges and has become a highly competent professional." Another letter writer sets forth that as a member in good standing in his church, respondent exhibits a "dutiful" and supportive-membership disposition. In addition, another writer comments that respondent "has a servant's heart, whether ... [by] helping people overcome adversity, serving at not-for-profit events, teaching youth the importance of being a contributor to society, or just being ... [a]

² A letter, dated June 8, 2014, by Mika El Heru of Denver, Colorado; an undated letter, by Vern Smith, Ministry Leader for Celebrate Recovery; an undated letter by Daoud Hadee, owner of Unlimited Chemicals LLC; an email, dated June 1, 2014, by Pastor Rickie L. Williams, Zion First Church of God in Christ; a letter, undated, by James w. Steiner, Chief Servant and CEO of Men's Ministry Catalyst and president of Alliance Group International; a letter, dated June 13, 2014, by John T. Jones of Denver, Colorado; a letter, dated May 17, 2014, by Alan and Lori De Voll.

personal cheerleader!" That writer states also that respondent "took a wrong turn" in his life, "but he has worked hard to get back on track and is ready to get his career in [pharmacy] ... back on track" because respondent is "honest, loyal, reliable and trustworthy." The writer of the penultimate letter, offered by respondent at the hearing, wrote, among other things, regarding respondent gaining full custody of his son, who respondent supported from his middle school years until he entered college. And the final letter, which was written by a married couple, notes that respondent displays "strong leadership skills and is an excellent communicator" whose "life's experiences contribute to the betterment" of others.

39. Over the period of November 22, 2013, to December 1, 2013, respondent took 12 continuing education courses relating to the work of pharmacy technicians or pharmacist. Those courses, and related examinations that he took and passed, included: Controlled Substance Scheduled Drugs: A Pharmacy Technician's Review; Implications, and the Need for Advocacy, Education and Safe Sourcing; Prevention of Medication Errors in the Older Adult Patient; Minimize Prescription Errors and Maximize Patient Safety; The Role of the Pharmacy Technician in Inventory Management; Pharmacy Technician's Role in Medication Therapy Management (MTM); A Pharmacist-Pharmacy Technician Collaboration to Reduce Diversion and Abuse of Opioid Analgesics; and Short-Cycle Dispensing.

Ultimate Factual Finding

40. It would not be against the public interest for respondent to gain licensure by registration as a Pharmacy Technician that is subject to terms and conditions of probation over a reasonable period of time.

LEGAL CONCLUSIONS

Standard of Proof

1. The party asserting the affirmative in an administrative hearing has both the burden of proof of going forward as well as the burden of persuasion by a preponderance of the evidence. (Gov. Code, § 11504; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

The burden of proof is on respondent Dunbar Theophilus Watson, Jr., by a preponderance of the evidence, to establish that the Pharmacy Technician Application should be granted because he is qualified for the registration for which he applied and that complainant has no cause to deny the application.

Cause For Denial of Application for Licensure - Discipline by Other State Board

2. Business and Professions Code section 480 provides, in part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has

[¶]...

(3)(A) 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.

Business and Professions Code section 4300 provides in part:

(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....*" (Emphasis added.)

Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ...

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by [the Pharmacy Law, (Bus. & Prof. Code, Chap. 9, § 4000, et. seq.).]

3. Cause exists to deny respondent's application for a pharmacy technician registration pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), 4300, subdivision (c), and 4301, subdivision (n), by reason of Factual Findings 3 through 5. The Colorado State Board of Pharmacy imposed disciplinary action against the pharmacist license held by respondent, and that discipline culminated in revocation of the license previously issued to respondent.

Cause for Denial of Application for Licensure-Unlawful Possession/ Use of Controlled Substance.

4. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ...

(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, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. (Italics added.)

[¶] ...

(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.

5. Cause exists to deny respondent's application for a pharmacy technician registration pursuant to Business and Professions Code sections 480, subdivision (a)(3)(a), 4300, subdivision (c), and 4301, subdivisions (h) and (j), by reason of Factual Findings 6 through 8. Respondent did administer to himself a controlled substance that is cocaine. He used a dangerous drug to an extent or in a manner as to be dangerous or injurious to himself.

Criteria for Evaluation of Application for Denial of Licensure When There First Exists Cause for Denial

6. California Code of Regulations, title 16, section 1769, provides in part:

(a) When considering the denial of a ... personal license under Section 480 of the Business and Professions Cod co, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(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 the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

Under the board's Disciplinary Guidelines, a section titled "Factors To Be Considered In Determining Penalties" provides:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation

11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

The board's Disciplinary Guidelines indicate that misconduct involving the unlawful possession, or use, of controlled substances constitutes a violation for which a Category II penalty is warranted. The facts in this matter, however, justify departure from the board's guidelines. The minimum penalty under the guidelines turns upon a stay of denial with five years' probation "where self-administration" of controlled substances is involved. But, the facts of this matter coupled with respondent's maturity and developed good character warrant departure from the guideline.

The board's Pharmacy Technician licensure application form asks, at question number 2, "[d]o you *currently engage*, or have you *been engaged in the past two years*, in the illegal use of controlled substances?" (Emphasis added.) In the instance of respondent, more than 12 to 13 years have passed since he engaged in the use of a controlled substance. He has completed diversion programs, and voluntarily attended drug counseling programs so as to encourage and mentor other persons in their quest to overcome unlawful drug use or illegal substance addiction. Moreover, respondent is committed to religious denominations that strictly forbid drug and alcohol use.

Respondent, who is now 54 years of age, has gone more than a decade without recreationally using the controlled substance, cocaine. A probationary term having a five-year duration is unnecessary in respondent's situation. However, although the aforementioned factors justify deviation from the recommended five years probationary term as set forth in the Board's disciplinary guidelines, it would still be necessary, for public protection purposes, to require respondent to undergo random drug screenings. It is not enough that someone with a history of drug use merely testifies they are no longer using drugs. Thus, random drug screenings will ensure that respondent is not using any drugs and will therefore not be a danger to the public.

7. No cause exists under Business and Professions Code sections 480, subdivision (a)(3)(A), 4300, subdivision (c), to the extent those sections interact with section 4301, subdivision (h), since no evidence was presented at hearing that respondent's self-administration of a controlled substance, or use of a dangerous drug, was to an extent that his drug use impaired respondent's ability to conduct with safety to the public the practice of pharmacy in the State of Colorado. No evidence was presented at hearing, and respondent credibly denies, consuming or using any drug while acting as a pharmacist when licensed in the State of Colorado.

The weight of the evidence, in light of the aforementioned criteria, shows that there was no actual harm to the public by way of respondent's personal use of cocaine. No consumer or patron of any pharmacy was shown to have been associated with respondent's recreational use of cocaine. There is no evidence of any practice error on respondent's part while he served as a pharmacist.

Respondent has not been convicted of any criminal offense. His misconduct in the State of Colorado spanned no more than three years, which terminated more than a dozen years ago.

The conduct for which denial of licensure exists is grounded in respondent's possession and use of cocaine on a recreational basis during the late 1990s and for a year or so after the year 2000.

Respondent committed the subject misconduct more than a decade ago.

Respondent has completed long ago a Colorado court-prescribed drug diversion program.

Very importantly, respondent has been involved in counseling other individuals who are in the process of overcoming their drug abuse problems.

There is no evidence that respondent enjoyed any financial benefit from his past misconduct. Rather, from the date of the 1998 arrest, his recreational use of a controlled substance has caused respondent to sustain substantial loss, both financially and in his personal domestic surroundings and relationships.

Respondent has no record of criminal arrest, conviction or violation of the laws of the State of California.

Respondent's evidence of rehabilitation consists primarily of an excellent record of him setting out to make amends for his past acts of misconduct. Respondent aspires to regain proficiency in the pharmacy profession and his approach is to take small steps towards resuming practice as a pharmacist, such as his current effort to gain

registration as a pharmacy technician. He is committed to a course to better himself. His ambition to gain registration as a pharmacy technician is commendable.

8. The board has a mandated interest to assure that its licensees can be trusted not to divert drugs from a pharmacy and sell them on the street. The board also has a legitimate concern about respondent's judgment in using drugs in the past. Balancing those concerns with the history of respondent's drug use, and the absence of any evidence to believe that respondent has in the past stolen or sold drugs, it is reasonable to conclude that respondent should be given an opportunity to work as a pharmacy technician, but under a probationary license.

9. It is not against the public interest for respondent to acquire registration as a Pharmacy Technician for a probation licensure period of three years.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a pharmacy technician license shall be issued to Dunbar Theophilus Watson, Jr., and immediately revoked; the order of revocation is stayed, and Dunbar Theophilus Watson, Jr., is placed on probation for three (3) years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs), any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he or she holds an interest

at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration, or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Respondent's failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Respondent's failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4896 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4896 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4896 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4896 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation. The first payment of any costs shall not occur before the first year anniversary of the effective date of the decision.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the board within ten (10) days of notification by the

board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work.

Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month

during which respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

13. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (for example., Alcoholics Anonymous or Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting every 15 business days unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Work Site Monitor

Within thirty (30) days of the effective date of this decision, or within fifteen (15) business days of first securing employment, whichever occurs first, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for

supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment after the termination of the first procured employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

16. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

17. Abstain from Illicit Drug Use

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

18. Random Drug Screening

Respondent at his or her own expense shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee

may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a designated representative until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices and controlled substances. Respondent shall not resume work until notified by the board.

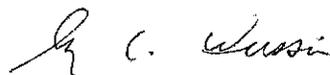
Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

This decision shall become effective on January 22, 2015.

It is so ORDERED on December 23, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President