

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

In the Matter of the Statement of Issues Against:

**MARCELO MONELA aka
MARCELO OBIANO MUNILA II**

Pharmacy Technician Registration Applicant

Respondent.

Case No. 5150

OAH No. 2014090979

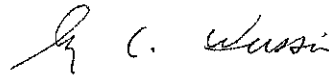
DECISION AND ORDER

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 March 6, 2015.

It is so ORDERED on February 4, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

BEFORE THE
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In the Matter of the Statement of Issues
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Respondent.

Case No. 5150

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PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 16, 2014.

Nicholas Tsukamaki, Deputy Attorney General, represented complainant.

Respondent was present and was unrepresented.

The matter was submitted on December 16, 2014.

FACTUAL FINDINGS

1. Virginia Herold made the statement of issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On August 2, 2013, the Board received an application for registration as a Pharmacy Technician from Marcelo Monela aka Marcelo Obiano Munila II (respondent). On July 29, 2013, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on January 7, 2014.

Criminal Convictions

3. On December 9, 2004, in a military proceeding, before a general court-martial of the United States Marine Corps, respondent was convicted of violating the Uniform Code of Military Justice (UCMJ) as follows:

a. Article 121 (larceny), in that on August 30, 2003, in Okinawa, Japan, respondent stole a Yamaha receiver valued at \$799.99 belonging to the Army Air Force Exchange Service (AAFES). Also, on various occasions between March 2000 and October 2003, in Okinawa, Japan, respondent stole various electronic merchandise of various values belonging to the AAFES.

b. Article 81 (conspiracy), in that on various occasions between June 2002 and October 2003, in Okinawa, Japan, respondent conspired with another individual to commit larceny of various electronic merchandise of various values belonging to AAFES.

c. Article 92 (violation of lawful general order), in that on various occasions between November 2000 and October 2003, in Okinawa, Japan, respondent violated a lawful general order by operating a private business from his assigned bachelor enlisted quarters without proper authorization.

d. Article 134 (impede an investigation), in that in October 2003, in Okinawa, Japan, respondent wrongfully endeavored to impede an investigation by influencing the testimony of another individual during an investigation by offering that individual the sum of \$3,000 if that individual would testify falsely by accepting full blame for the theft of electronic merchandise stolen by respondent from the AAFES. Also, between August and September 2003, in Okinawa, Japan, respondent wrongfully solicited an individual to receive and conceal stolen electronic merchandise of a value greater than \$500 belonging to the AAFES. On various occasion between March 2000 and October 2003, in Okinawa, Japan, respondent wrongfully solicited numerous individuals to buy and receive stolen electronic merchandise of various values belonging to the AAFES by offering to sell those individuals the stolen merchandise at a discounted price.

These convictions are substantially related to the duties, qualifications and functions of a pharmacy technician. These convictions involve acts of moral turpitude and dishonesty.

Respondent was ordered to be confined for six years and to pay a \$50,000 fine. The sentence was later reduced and respondent was confined for 18 months and ordered to pay a fine of approximately \$30,000.

4. Respondent's conduct as set forth in Finding 3, above, would be cause for discipline if performed by a licensee.

5. On December 3, 2007, in the Alameda County Superior Court, respondent was convicted of violating Penal Code section 487, subdivision (a) (grand theft of personal property), a felony. Imposition of sentence was suspended and respondent was order to serve three years on probation and pay a fine and fees. On September 30, 2011, the conviction was reduced to a misdemeanor pursuant to Penal Code 17, subdivision (b) and the conviction was dismissed pursuant to Penal Code section 1203.4.

On seven separate occasions between June 30, 2007, and July 12, 2007, respondent, while employed at Target in two different locations, engaged in stealing various items from Target and then returned those items for cash using receipts for the same products that he had previously purchases, thus retaining the original items purchases and getting cash back for returning the same stolen item. The total loss to Target as a result of respondent's scheme was at least \$3,932.51.

This conviction is substantially related to the duties, qualifications, and functions of a pharmacy technician. This conviction involves acts of moral turpitude, dishonesty, fraud and deceit. This was not a one-time petty theft; this was a sophisticated scheme to defraud his employer.

6. Respondent's actions as described above demonstrate that respondent engaged in unprofessional conduct.

7. Respondent presented eight character letters. He worked for McDonalds as a maintenance worker from March 2012 to December 2013. His supervisor found him to be responsible and trustworthy. He presently works for Walgreens. His supervisor in his role as a pharmacy cashier from January 2014 to April 2014 found respondent to be helpful, kind, reliable and cheerful. Respondent is presently still working for Walgreens, but not behind the pharmacy counter. His present supervisor finds him pleasant and patient. He also works for Penumbra since June 2014 as a Production Builder I. He is in good standing with Penumbra. Some of the letters indicate they know something about respondent's past and some do not. None of the letters seem to reflect the serious nature of respondent's criminal past stating that respondent made a mistake without thinking of the consequences.

8. Respondent graduated from Mission Valley College with a certificate to be a Pharmacy Technologist.

9. Respondent is married with one son. He is a good father and involved in his son's after school activities. His wife has become a citizen of the United States. He was separated from his family while he was confined in the military. He was depressed and believes that is what led to his criminal behavior on both occasions. He claims to recognize that he needs therapy, but has not sought any counseling since his release. He claims his family is his therapy. However, without a mental health evaluation there is no way to determine if respondent's mental health issues are in remission and the there is no way to judge the likelihood that respondent will engage in criminal conduct in the future.

10. Respondent still owes \$12,857.38 to the military as a result of his conviction.

LEGAL CONCLUSIONS

Cause for Denial

1. Complainant alleged that respondent's license is subject to discipline pursuant to Business and Professions Code sections 4300, subdivision (c), in conjunction with 4301, subdivisions (f) (moral turpitude), (l) (conviction), and 480, subdivisions (a)(1) (conviction of crime substantially related to qualifications, functions, or duties of profession), (a)(2) (dishonesty, fraud, and deceit), and (a)(3) (if done by a licentiate would be grounds for discipline) and California Code of Regulations, title 16, section 1770 (conviction of a substantially related crime).

Respondent's convictions as set forth in Factual Findings 3 through 6 constitute multiple convictions of substantially related crimes that involve moral turpitude, dishonesty, fraud and deceit.

Respondent's violations of law are substantially related to the qualifications, functions, and duties of a registered pharmacy technician; his application is therefore subject to denial pursuant to Business and Professions Code sections 480, 4300, subdivision (c) and 4301, subdivision (l).

Penalty Determination

2. In determining the appropriate penalty, public safety is the board's paramount concern. Respondent has demonstrated some rehabilitation. He is attempting to change his life. However, without a mental health evaluation it would be against the public interest to allow respondent to be licensed as a registered pharmacy technician at this time.

ORDER

The application of Marcelo Monela aka Marcelo Obiano Munila II for a Pharmacy Technician License is hereby denied.

DATED: 1/5/15

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues
Against:

Case No. 5150

12 **MARCELO MONELA**
13 **aka MARCELO OBIANO MUNILA II**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 Respondent.

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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 August 2, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs, received an application for registration as a pharmacy technician from Marcelo Monela
24 aka Marcelo Obiano Munila II (Respondent). On or about July 29, 2013, Respondent certified
25 under penalty of perjury the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on January 7, 2014.

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JURISDICTION

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

STATUTORY AND REGULATORY PROVISIONS

9 4. Section 4300, subdivision (c) of the Code states in pertinent part:

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

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

16 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
18 whether the act is a felony or misdemeanor or not.

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

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

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

24 “(1) Been convicted of a crime. A conviction within the meaning of this section means a
25 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
26 board is permitted to take following the establishment of a conviction may be taken when the
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
28 an order granting probation is made suspending the imposition of sentence, irrespective of a
subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

3 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
4 substantially related to the qualifications, functions, or duties of the business or profession for
5 which application is made.

6 ...”

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

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

14 **FACTUAL BACKGROUND**

15 8. On or about December 9, 2004, in a military proceeding entitled *United States v.*
16 *Marcelo Monela*, before a general court-martial of the United States Marine Corps, Respondent
17 was convicted by his plea of guilty of the following violations of the Uniform Code of Military
18 Justice (UCMJ):

19 a. Article 121 (larceny), in that on or about August 30, 2003, in Okinawa, Japan,
20 Respondent stole a Yamaha receiver valued at \$799.99 belonging to the Army Air Force
21 Exchange Service (AAFES). Also, on various occasions between March 2000 and October 2003,
22 in Okinawa, Japan, Respondent stole various electronic merchandise of a value greater than and
23 less than \$500 belonging to the AAFES.

24 b. Article 81 (conspiracy), in that on various occasions between June 2002 and October
25 2003, in Okinawa, Japan, Respondent conspired with another individual to commit the following
26 offense under the UCMJ: larceny of various electronic merchandise of a value greater than and
27 less than \$500 belonging to the AAFES.

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1 c. Article 92 (violation of a lawful general order), in that on various occasions between
2 November 2000 and October 2003, in Okinawa, Japan, Respondent violated a lawful general
3 order by operating a private business from his assigned bachelor enlisted quarters without proper
4 authorization.

5 d. Article 134 in that:

6 i. In or around October 2003, in Okinawa, Japan, Respondent wrongfully
7 endeavored to impede an investigation by influencing the testimony of another individual during
8 an investigation of the case *United States v. Marcelo Monela* by offering that individual the sum
9 of \$3,000 if the individual would testify falsely by accepting full blame for the theft of electronic
10 merchandise stolen by Respondent from the AAFES.

11 ii. Between August and September 2003, in Okinawa, Japan, Respondent wrongfully
12 solicited an individual to receive and conceal stolen electronic merchandise of a value greater
13 than \$500 belonging to the AAFES.

14 iii. On various occasions between March 2000 and October 2003, in Okinawa, Japan,
15 Respondent wrongfully solicited numerous individuals to buy and receive stolen electronic
16 merchandise of a value greater than and less than \$500 belonging to the AAFES by offering to
17 sell those individuals the stolen merchandise at a discounted rate.

18 Respondent was ordered to be confined for six (6) years and ordered to pay a \$50,000 fine.

19 9. On or about December 3, 2007, in a criminal proceeding entitled *People v. Marcelo*
20 *Monela*, Case Number 531357, in Alameda County Superior Court, Respondent was convicted by
21 his plea of nolo contendere of violating Penal Code section 487, subdivision (a) (grand theft of
22 personal property), a felony. Imposition of sentence was suspended and Respondent was ordered
23 to serve three (3) years probation and pay a fine and fees. The circumstances of Respondent's
24 conviction are as follows:

25 a. On seven separate occasions between June 30, 2007, and July 12, 2007, Respondent,
26 while employed at a Target store in Albany, California, engaged in the following conduct:
27 (1) Respondent stole various items from the store; and (2) Respondent took various items from
28 the store and then returned those items for cash using receipts for the same products that

1 Respondent had previously purchased. The total loss to Target as a result of Respondent's theft
2 and fraudulent returns was \$3,932.51.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Conviction of Substantially Related Crime(s))**

5 10. Respondent's application is subject to denial under the following section(s) of the
6 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(f) and
7 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
8 crime or crimes, in that on or about December 9, 2004, and/or on or about December 3, 2007, as
9 described above in paragraphs 8 and 9, Respondent suffered substantially related conviction(s).

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, and/or Deceit)**

12 11. Respondent's application is subject to denial under the following section(s) of the
13 Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f) and
14 California Code of Regulations, title 16, section 1770, in that between March 2000 and October
15 2003, and between June 30, 2007, and July 12, 2007, as described above in paragraphs 8 and 9,
16 Respondent committed acts involving moral turpitude, dishonesty, fraud, and/or deceit.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(Unprofessional Conduct)**

19 12. Respondent's application is subject to denial under the following section(s) of the
20 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
21 above in paragraphs 8 and 9, Respondent engaged in unprofessional conduct.

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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 Marcelo Monela aka Marcelo Obiano Munila II to be a pharmacy technician;
2. Taking such other and further action as is deemed necessary and proper.

DATED: 8/12/14 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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