

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

In the Matter of the Statement of Issues
Against:

LAURA MARTIN DEL CAMPO

Respondent.

Case No. 5415

OAH No. 2015091074

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 January 29, 2016.

It is so ORDERED on December 30, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on November 17, 2015.

Kimberly King, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Laura Martin Del Campo represented herself.

The matter was submitted on November 17, 2015.

REDACTION OF PRIVATE INFORMATION

After submission of the matter, the Administrative Law Judge redacted Exhibits 2 and 8 to obscure respondent's social security number and several dates of birth.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent submitted a Pharmacy Technician Registration application to the Board, dated June 20, 2014. The Board denied the application on February 2, 2015. On February 11, 2015, respondent requested a hearing on the denial.

2. On August 18, 2015, complainant filed a Statement of Issues in her official capacity, alleging three grounds to deny the application: (i) conviction of a substantially related crime; (ii) acts involving dishonesty, fraud, or deceit; and (iii) acts warranting denial of licensure.

Respondent's Conviction

3. On June 21, 2011, in the Superior Court of California, County of Los Angeles, Case No. 1JB04836, respondent was convicted, based on her plea of nolo contendere, of petty theft, a misdemeanor. (Pen. Code, § 484, subd. (a).)¹ The court suspended imposition of sentence and placed respondent on summary probation for three years, under various terms, including that she serve one day in jail (with credit for one day), complete seven days of community service, pay court fees of \$208, and stay away from the store where the theft occurred.

4. The circumstances surrounding the conviction were that on April 21, 2011, respondent, while working as a Walmart cashier in Baldwin Park, California, scanned only selected items of merchandise that another Walmart employee brought to respondent's checkout station. Respondent then placed all merchandise, paid and unpaid, into a shopping bag and handed the bag to the employee. Walmart's subsequent investigation revealed that the undercharged amount was about \$57.

Other Evidence

5. Respondent admitted at the hearing that she undercharged the Walmart employee. She testified that she learned from the experience "[n]ot to make stupid decisions, for nothing. You know, I wasn't getting any benefit out of it, I mean, there was no point in doing anything, it was just being stupid."

6. Complainant alleges that respondent also undercharged merchandise of family, friends, and other Walmart employees for two or three years, for a total loss to Walmart of between \$10,000 and \$15,000. But the evidence was insufficient to prove that respondent undercharged merchandise to this extent. Respondent's conviction was for only one instance of undercharging. While two Walmart loss prevention documents recite respondent's alleged admission to more undercharging, respondent denied making that admission, and testified that one of the documents – a "statement" bearing her signature – did not include the alleged admission when she signed and left it with Walmart loss prevention personnel. No one from Walmart testified to the contrary, or at all, and there was no evidence presented to corroborate respondent's alleged admission.

7. Walmart fired respondent due to her April 2011 theft. On August 18, 2011, respondent failed to appear for a hearing in her criminal case, and the court revoked her probation and issued a warrant for her arrest. Respondent appeared in court on June 7, 2012,

¹ Respondent's last name at the time was Barraza.

and the court recalled the warrant and reinstated her probation on the same terms and conditions. Respondent paid her fine and completed her community service by June 20, 2012.

8. Respondent testified that she missed the court hearing on August 18, 2011, because her daughter was in the hospital. She also testified that from April 2011 until April 2014, she worked in merchandising for Anschutz Entertainment Group (AEG). After that, she completed a pharmacy technician education program at UEI College. In October 2014, she began a pharmacy technician internship. The pharmacy hired her one week later as a full-time clerk, and she still works there. She is 32 years old, and has no other criminal record.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that she meets all prerequisites necessary for the requested pharmacy technician registration. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden requires proof by a preponderance of the evidence. (See Evid. Code, § 115.)

2. Complainant alleges that respondent's conviction is grounds to deny her application. The Board may deny respondent's application if she has been convicted of a crime that is "substantially related to the qualifications, functions, or duties" of a pharmacy technician. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 481.)² A crime is "substantially related" to a pharmacy technician's qualifications, functions or duties "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.)

3. The Board may also deny respondent's application if she has "[d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another." (§ 480, subd. (a)(2).) In addition, the Board may deny respondent's application if she has "[d]one any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." (*Id.*, subd. (a)(3)(A).) Such acts include conviction of a "substantially related" crime and acts of "moral turpitude, dishonesty, fraud, deceit, or corruption," among others. (§ 4301, subs. (f), (l).)

4. There is cause to deny respondent's application for conviction of a crime that is "substantially related to the qualifications, functions or duties" of a pharmacy technician. (§§ 480, subd. (a)(1), 481.) Respondent was convicted of a crime involving dishonesty, and honesty is an essential quality of a pharmacy technician. A pharmacy technician assists a pharmacist in a profession that involves the storage, compounding, dispensing, and sale of

² Undesignated statutory references are to the Business and Professions Code.

dangerous drugs and controlled substances. (See §§ 4036, 4037, 4038.) The Board has a substantial interest in ensuring the honesty and integrity of persons who assist pharmacists with these tasks. Therefore, respondent's conviction evidences her potential unfitness to be a pharmacy technician to a substantial degree.

5. There is also cause to deny respondent's application because she has done an act "involving dishonesty, fraud, or deceit with the intent to substantially benefit . . . herself or another, or substantially injure another." (§ 480, subd. (a)(2).) Respondent's crime was intended to substantially benefit a Walmart employee, by providing merchandise to that employee free of charge.

6. In addition, there is cause to deny respondent's application because she has committed an act that would be grounds for suspension or revocation of a pharmacy technician registration. (§ 480, subd. (a)(3).) Respondent committed a "substantially related" crime involving "dishonesty [and] fraud," as described in Legal Conclusions 4 and 5. (§ 4301, subds. (f), (l).)

7. The Board has adopted criteria to determine if an applicant is sufficiently rehabilitated to justify licensure, when cause to deny an application has otherwise been established. The criteria that the Board will consider 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 the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769, subd. (b).)

8. Respondent presented insufficient evidence of her rehabilitation. To respondent's credit, she has achieved educational success since her conviction, and has no subsequent (or prior) criminal record. (Factual Finding 8.) But respondent's dishonesty as a retail cashier causes concern about her working as a technician at a pharmacy. She committed the crime under consideration less than five years ago, and her conviction has not been expunged or dismissed. The probation in her criminal case was revoked for almost 10

months, due to her failure to appear for a court hearing. (Factual Finding 7.) Respondent also presented no evidence about her present honesty and integrity from any other person with knowledge of her conviction, such as an employer, business associate, or educator. Her own testimony about learning “[n]ot to make stupid decisions, for nothing” is insufficient to prove her present honesty and integrity. (See Factual Finding 5.)

9. Considering these facts and the totality of the record, there is insufficient evidence of respondent’s rehabilitation to support issuance of the requested pharmacy technician registration at this time.

ORDER

Respondent Laura Martin Del Campo’s application for a pharmacy technician registration is denied.

DATED: December 8, 2015

DocuSigned by:
Thomas Heller
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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2542
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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
12 Against:

Case No. 5415

13 **LAURA MARTIN DEL CAMPO**
14 **aka LAURA BARRAZA**

STATEMENT OF ISSUES

14 Pharmacy Technician Registration Applicant

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 23, 2014, the Board received an application for a Pharmacy
23 Technician Registration from Laura Martin Del Campo aka Laura Barraza (Respondent). On or
24 about June 20, 2014, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 February 2, 2015.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 4. Section 4300 states, in pertinent part:

6

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

12 “(1) Medical or psychiatric evaluation.

13 “(2) Continuing medical or psychiatric treatment.

14 “(3) Restriction of type or circumstances of practice.

15 “(4) Continuing participation in a board-approved rehabilitation program.

16 “(5) Abstention from the use of alcohol or drugs.

17 “(6) Random fluid testing for alcohol or drugs.

18 “(7) Compliance with laws and regulations governing the practice of pharmacy.”

19 **STATUTORY AND REGULATORY PROVISIONS**

20 5. Section 480 states, in pertinent part:

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

23 “(1) Been convicted of a crime. A conviction within the meaning of this section means a
24 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
25 board is permitted to take following the establishment of a conviction may be taken when the time
26 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
27 order granting probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

8 “(b) Notwithstanding any other provision of this code, a person shall not be denied a
9 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
10 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
11 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
12 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
13 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
14 Section 482.

15 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
16 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
17 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
18 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
19 of the dismissal.”

20 6. Section 4301 states, in pertinent part:

21 “The board shall take action against any holder of a license who is guilty of unprofessional
22 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
23 Unprofessional conduct shall include, but is not limited to, any of the following:

24 ...

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

28

1 "(I) The conviction of a crime substantially related to the qualifications, functions, and duties
2 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

7 The board may inquire into the circumstances surrounding the commission of the crime, in order to
8 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
9 dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment."

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

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

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Substantially Related Crime)**

3 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
4 that Respondent was convicted of a crime substantially related to the qualifications, functions, and
5 duties of a registered pharmacy technician, as follows:

6 a. On or about June 21, 2011, after pleading nolo contendere, Respondent was convicted
7 of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft] in the
8 criminal proceeding entitled *The People of the State of California v. Laura Barraza* (Super. Ct.
9 Los Angeles County, 2011, No. 1JB04836.) The Court sentenced Respondent to serve one day in
10 Los Angeles County Jail and placed her on 3 years probation, with terms and conditions.

11 b. The circumstances surrounding the conviction are that on or about April 21, 2011,
12 Respondent, while working as a cashier at Wal-Mart, was observed only scanning selected items of
13 merchandise placed on the counter by a female customer. Respondent then placed all
14 merchandise, paid and unpaid, into a Wal-Mart shopping bag and handed the shopping bag to the
15 customer. During a subsequent interview by the store security the Respondent admitted to
16 allowing merchandise to be taken without paying. She further admitted undercharging the
17 merchandise of family, friends and other Wal-Mart employees for the last two to three years for a
18 total loss to Wal-Mart of between \$10,000 - \$15,000.00.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Acts Involving Dishonesty, Fraud, or Deceit)**

21 9. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
22 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
23 substantially benefit herself, or substantially injure another. Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in paragraph 8, subparagraph (b), as though
25 set forth fully

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

3 10. Respondent's application is subject to denial under section 480, subdivisions (a)(3)A)
4 and (a)(3)(B), in that Respondent committed acts which if done by a registered pharmacy
5 technician, would be grounds for suspension or revocation of the license as follows:

6 a. Respondent was convicted of crimes substantially related to the qualifications,
7 functions, or duties of a pharmacy technician which to a substantial degree evidence her present or
8 potential unfitness to perform the functions authorized by the license in a manner consistent with
9 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), in conjunction
10 with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this
11 reference incorporates, the allegations set forth above in paragraph 8, subparagraph (a), as though
12 set forth fully.

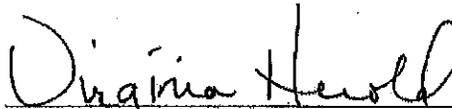
13 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
14 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
15 allegations set forth above in paragraph 8, subparagraph (b), as though set forth fully.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board issue a decision:

- 19 1. Denying the application of Laura Martin Del Campo for a Pharmacy Technician
20 Registration; and
21 2. Taking such other and further action as deemed necessary and proper.

22
23
24 DATED: 8/18/15



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

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