

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

In the Matter of the Statement of Issues:

SHADI SABERI,

Pharmacy Technician Registration Applicant

Respondent.

Case No. 5938

OAH No. 2017020212

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 at 5:00 p.m. on July 28, 2017.

It is so ORDERED on June 28, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

SHADI SABERI

Pharmacy Technician Registration Applicant,

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Case No. 5938

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PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on May 10, 2017.

Deputy Attorney General David E. Hausfeld represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent, Shadi Saberi, represented herself.

The matter was submitted on May 10, 2017.

FACTUAL FINDINGS

1. On March 14, 2016, respondent submitted to the board an application for a Pharmacy Technician Registration.

2. On June 24, 2016, the board notified respondent that her application had been denied "pursuant but not limited to, sections 480(a)(1), 480 (a)(2), and 480 (a)(3) of the Business and Professions Code. This denial is based upon your June 2, 2012, arrest, your subsequent convictions of theft and illegal use of tear gas. . . . Your application did not include sufficient evidence of rehabilitation." (Exh. 4)

3. On October 14, 2016, complainant, while acting in her official capacity as the Executive Officer for the board, filed a statement of issues against respondent. Respondent timely requested a hearing and the instant hearing ensued.

Respondent's Criminal Convictions

4. On July 26, 2012, respondent, after entry of guilty pleas, was convicted in San Diego Superior Court of one count of violating California Penal Code section 484 (petty theft) and one count of violating Penal Code section 28810, subdivision (g)(1) (use of tear gas, not in self-defense), both misdemeanors.

5. The facts and circumstances underlying respondent's convictions are summarized as follows: On June 2, 2012, respondent stole some clothing (pants and shirt) from the Kohl's store located on Mira Mesa Boulevard, San Diego, California; a Kohl's security/loss prevention officer witnessed respondent taking the merchandise so he followed respondent when she left the store; the officer approached respondent in the parking lot, identified himself, and told respondent that he saw her taking clothing from the store without having paid for it; he asked to see the items respondent took; in response, respondent began walking away; the security officer followed her; respondent sprayed some pepper spray/tear gas over her shoulder and then ran away, dropping the stolen merchandise on the ground; the security guard got some of the pepper spray around his right eye, causing irritation; the guard called the police; the police came to the scene; they talked with the security guard and then began looking for respondent; they located respondent and the security guard identified her as the person he saw taking items from the store and subsequently spraying tear gas at him; respondent was arrested, prosecuted and convicted, as set forth in Finding 4, above.

6. As a result of the convictions respondent was placed on summary probation for a period of three years on certain terms and conditions, including having to perform 120 hours of community service.

Substantial Relationship

7. A Pharmacy Board Inspector reviewed the documents and reports concerning respondent's criminal convictions and testified that the convictions were for acts/crimes that are substantially related to the qualifications, functions and duties of a pharmacy technician because the crimes involved moral turpitude and pharmacy technicians must be honest and of good character because they are privy to customers' "private, personal, and financial information" and they handle controlled substances. Private information could be sold to others or used by a pharmacy technician for illegal purposes and, a pharmacy technician could divert drugs and sell the drugs on the street.

Factors Related to Mitigation and Rehabilitation

8. Respondent testified that the incidents leading to her convictions were “a big mistake, I did a bad thing and put myself in a bad situation.” She used the pepper spray because “the security guard was a big man and I was scared.”

9. Respondent came to the United States in 2009, attended pharmacy school and obtained the necessary training to become a pharmacist technician.

10. In May of 2016, respondent earned an Associate of Science (biology) degree and an Associate of Science (chemistry studies) degree from San Diego Miramar College.

11. Respondent successfully completed her criminal probation including the community service requirements. She was only required to complete 120 hours of community service; however, she completed 155.5 hours of volunteer work at the Mira Mesa Branch Library. As proof of her community service respondent presented a July 26, 2013, letter from the Branch Manager of the Mira Mesa Branch Library. The manager wrote:

To whom it may concern:

This is to acknowledge that Shadi Saberi has been a volunteer at the Mira Mesa Branch Library from September 2012 to July 2013.

Shadi has satisfactorily completed 155.5 hours of community service. She is an excellent and reliable volunteer. She comes in regularly to assist with various tasks and projects. Shadi has been a tremendous help to those patrons needing computer assistance. She was always patient and reliable. Shadi went above and beyond service by making signs for our Big Read program and bringing in a special Iranian New Year's display. She also assisted with laminating our shelf signs. We appreciate very much the help Shadi has given to the library staff. We will truly miss Shadi and her wonderful library service. (Exh. 10-F)

12. On August 5, 2015, respondent's convictions were dismissed pursuant to Penal Code section 1203.4. (Exh. 9)

13. On November 15, 2016, respondent gave birth to her daughter.

14. Currently, respondent is attending San Diego State University where she is studying Public Health Administration. Her next goal is “to apply to pharmacy schools for the

pharm D program this year”; because, “always I had a dream to work in the pharmacy field and help people. I would like to apply for a job as a pharmacy technician. And also, I would like to continue my education and achieve a higher degree in this field.” (Exh. 5)

LEGAL CONCLUSIONS

1. Cause for denial of respondent’s application(s) exist(s) pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A), based on respondent’s convictions for petty theft and improper use of pepper spray, crimes substantially related to the qualifications, functions and duties of a pharmacy technician and involving acts that would be grounds for suspension or revocation of a pharmacy technician’s registration.

2. Cause for denial of respondent’s application(s) exist(s) pursuant to Business and Professions Code section 480, subdivisions (a)(2) and (a)(3)(A), based on respondent’s petty theft conviction; a conviction for acts involving dishonesty, moral turpitude, deceit, and/or corruption with the intent to substantially benefit herself and for having committed acts that would be grounds for suspension or revocation of a pharmacy technician’s registration on the grounds of unprofessional conduct.

3. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (*California Administrative Hearing Practice* (Cont.Ed.Bar (2d ed. 1997) The Hearing Process, §§ 7.51-7.53, pp. 365-367).) Therefore, in the present case it was incumbent upon respondent to prove that she has been rehabilitated to the point where allowing her to work as a pharmacy technician would not pose a threat to the public health, safety and/or welfare.

4. The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) As Chief Justice Lucas observed, “The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue.” (*Kwasnik v. State Bar, ibid.*, at 1070.)

5. The board has established guidelines for assessing rehabilitation in California Code of Regulations, title 16, section 1769. Pursuant to section 1769, the following criteria are to be used:

- (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 Business and Professions Code section 480.

(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 of rehabilitation submitted by respondent.

Evaluation

6. Theft and improperly using tear gas are serious crimes; however, it has been approximately five years since respondent's convictions and she has no other record of illegal conduct, either before or after her convictions. Respondent has complied with, and exceeded, all of the terms and conditions of her criminal probation and has had her convictions expunged pursuant to Penal Code section 1203.4. Respondent has moved forward with her education and her excellent work with the Mira Mesa Library revealed that she is a competent and valued employee. Respondent now has a daughter to care for. Her testimony and demeanor during the hearing evidenced that she has learned from her mistakes. Respondent successfully established at the hearing, by a preponderance of the evidence, that she is currently of such good character that her application should be accepted.

ORDER

The board's denial of respondent's application for a pharmacy technician registration is reversed. Respondent's application shall be accepted and upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent.

Dated: May 26, 2017.

DocuSigned by:
Roy Hewitt
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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues Against:

Case No. 5938

13 **SHADI SABERI**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration Applicant**

Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

21 2. On March 14, 2016, the Board received an application for a Pharmacy Technician
22 Registration from Shadi Saberi (Respondent). On March 10, 2016, Shadi Saberi certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on June 24, 2016.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

1 4. Code section 4300, subdivision (c) states:

2 The board may refuse a license to any applicant guilty of unprofessional conduct.

3 **STATUTORY PROVISIONS**

4 5. Code section 475 states, in pertinent part:

5 (a) Notwithstanding any other provisions of this code, the provisions
6 of this division shall govern the denial of licenses on the grounds of:

7 (1) Knowingly making a false statement of material fact, or
8 knowingly omitting to state a material fact, in an application for a license.

9 (2) Conviction of a crime.

10 (3) Commission of any act involving dishonesty, fraud or deceit
11 with the intent to substantially benefit himself or another, or substantially injure
12 another.

13 (4) Commission of any act which, if done by a licentiate of the
14 business or profession in question, would be grounds for suspension or revocation
15 of license.

16

17 6. Code section 480 states, in pertinent part:

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

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

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

(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.

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

(b) Notwithstanding any other provision of this code, a person shall
not be denied a license solely on the basis that he or she has been convicted of a
felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5
(commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that

1 he or she has been convicted of a misdemeanor if he or she has met all applicable
2 requirements of the criteria of rehabilitation developed by the board to evaluate
3 the rehabilitation of a person when considering the denial of a license under
subdivision (a) of Section 482.

4 (c) Notwithstanding any other provisions of this code, a person shall
5 not be denied a license solely on the basis of a conviction that has been dismissed
6 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant
7 who has a conviction that has been dismissed pursuant to Section 1203.4,
8 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

9 (d) A board may deny a license regulated by this code on the ground
10 that the applicant knowingly made a false statement of fact that is required to be
11 revealed in the application for the license.

12 7. Code section 482 states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

- 15 (a) Considering the denial of a license by the board under section 480; or
- 16 (b) Considering suspension or revocation of a license under section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 8. Code section 493 states:

20 Notwithstanding any other provision of law, in a proceeding conducted by
21 a board within the department pursuant to law to deny an application for a license
22 or to suspend or revoke a license or otherwise take disciplinary action against a
23 person who holds a license, upon the ground that the applicant or the licensee has
24 been convicted of a crime substantially related to the qualifications, functions, and
25 duties of the licensee in question, the record of conviction of the crime shall be
26 conclusive evidence of the fact that the conviction occurred, but only of that fact,
27 and the board may inquire into the circumstances surrounding the commission of
28 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

9. Code section 4301 states, in pertinent part:

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

1
2 ...
3 (f) The commission of any act involving moral turpitude, dishonesty,
4 fraud, deceit, or corruption, whether the act is committed in the course of relations
5 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
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(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1768 states:

(a) Where the board has denied an application for a license, the earliest date on which the applicant may reapply for a license is one year after the effective date of the denial.

(b) All competent evidence of rehabilitation presented will be considered upon a reapplication. The board shall use the criteria listed in section 1769 when considering evidence of rehabilitation.

11. California Code of Regulations, title 16, section 1769 states, in pertinent part:

(a) When considering the denial of a facility or personal license under section 480 of the Business and Professions Code, 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.

1 (2) Evidence of any act(s) committed subsequent to the act(s) or
2 crime(s) under consideration as grounds for denial under section 480 of the
3 Business and Professions Code.

4 (3) The time that has elapsed since commission of the act(s) or
5 crime(s) referred to in subdivision (1) or (2).

6 (4) Whether the applicant has complied with any terms of parole,
7 probation, restitution or any other sanctions lawfully imposed against the
8 applicant.

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

10

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

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

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(July 26, 2012 Criminal Conviction for Petty Theft on June 2, 2012)**

21 13. Respondent's application for a Pharmacy Technician Registration is subject to
22 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that she was convicted of
23 crimes substantially related to the qualifications, duties, and functions of a registered pharmacy
24 technician, which would also be a ground for discipline for a registered pharmacy technician
25 under Code section 4301, subdivision (I). The circumstances are as follows:

26 a. On July 26, 2012, in a criminal proceeding entitled *The People of the State*
27 *of California vs. Shadi Saberi*, in San Diego County Superior Court, Central Division, Central
28 Courthouse Case Number CD241301, Respondent was convicted on her plea of guilty of
violating Penal Code (PC) sections 484, petty theft, and 28810, subdivision (g)(1), use of tear
gas, not in self-defense, both misdemeanors.

b. As a result of the convictions, on July 26, 2012, Respondent was
sentenced to be committed to the custody of the San Diego County Sheriff for one day, with
credit for one day actually served, and granted three years summary probation for each count.

1 Respondent was ordered to complete 15 days of service under the public service program (PSP),
2 and pay fines, assessments, fees, and restitution, with credit for the equivalent of one day served.
3 Respondent was also ordered to stay away from the Kohl's store in Mira Mesa, California. On
4 August 13, 2012, Respondent's order to complete 15 days of service under the PSP was
5 converted to 120 hours of volunteer work. Respondent filed a Petition for Dismissal under PC
6 section 1203.4. On August 5, 2015, upon hearing Respondent's petition, Respondent's
7 misdemeanor convictions for violation of PC sections 484 and 28810, subdivision (g)(1), were
8 set aside, and the charges dismissed based on Respondent's fulfillment of the conditions of her
9 probation during the entire period of probation.

10 c. The facts that led to the convictions are that on June 2, 2012, Respondent
11 took several items from Kohl's Department Store along Mira Mesa Boulevard in San Diego,
12 California. A loss prevention officer who had been monitoring Respondent's movement through
13 the store's closed circuit television intercepted Respondent at the exit. The officer introduced
14 himself to Respondent and requested her to return to the store. Respondent refused, handed over
15 a pair of slacks to the loss prevention officer, and continued walking away. The loss prevention
16 officer continued following Respondent, who was already holding a pepper spray at this time.
17 Respondent took a shirt from her purse and threw it on the ground. When the loss prevention
18 officer closed in on Respondent, she released the chemicals from the pepper spray canister over
19 her shoulder. Respondent then hailed a car and requested the driver to help her. Respondent
20 boarded the car but got out while the car was stopped at an intersection. The driver was later
21 apprised that Respondent took merchandise from a store without paying. The driver then pointed
22 the direction where Respondent fled and identified her upon apprehension by officers of the San
23 Diego Police Department.

24 SECOND CAUSE FOR DENIAL OF APPLICATION

25 (Unprofessional Conduct – Commission of Acts Involving Dishonesty, Fraud, or Deceit)

26 14. Respondent's application for a Pharmacy Technician Registration is subject to
27 denial under Code section 480, subdivision (a)(2) in that she committed acts which involve
28 dishonesty, fraud, and deceit, which would be grounds for discipline for a registered pharmacy

1 technician under Code section 4301, subdivision (f). Respondent was dishonest, fraudulent, and
2 deceitful when she committed theft and used pepper spray not in self-defense but to facilitate her
3 flight from the crime scene, as described in paragraph 13, above, which is incorporated by
4 reference.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(Act If Done By Licentiate-Commission of Acts Involving Moral Turpitude or Corruption)**

7 15. Respondent's application for a Pharmacy Technician Registration is subject to
8 denial under Code section 480, subdivision (a)(3)(A) in that she committed acts that involve
9 moral turpitude and corruption, which would be grounds for discipline for a registered pharmacy
10 technician under Code section 4301, subdivision (f). Respondent committed acts involving moral
11 turpitude and corruption when she shoplifted from a store and when pursued by the store's loss
12 prevention officer, used pepper spray not in self-defense but to facilitate her flight from the crime
13 scene, as described in paragraph 13, above, which is incorporated by reference.

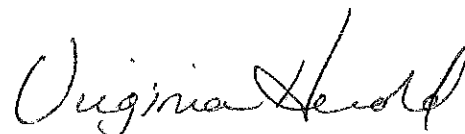
14 **PRAYER**

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

- 17 1. Denying the application of Shadi Saberi for a Pharmacy Technician Registration;
18 and
19 2. Taking such other and further action as deemed necessary and proper.

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23 DATED: _____

10/14/16



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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