

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

In the Matter of the Statement of Issues
Against:

ANTHONY L. SALADINO,

Respondent.

Case No. 6491

OAH No. 2018110093

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 May 2, 2019.

It is so ORDERED on April 2, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", written over a horizontal line.

By

Victor Law, R.Ph.
Board President

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 3, 2019, in Los Angeles.

Katherine Messana, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Justin H. Sanders, Attorney at Law, appeared on behalf of respondent Anthony L. Saladino, who was present.

Oral and documentary evidence was received. The record was held open to allow respondent to submit additional documents and to allow complainant to respond. Respondent timely filed additional documents, which were marked as exhibit I. Complainant timely filed a response, which was marked as exhibit 5. Exhibit I was admitted into evidence.

The record was closed and the matter was submitted on January 18, 2019.

FACTUAL FINDINGS

Jurisdiction

1. On November 15, 2017, respondent filed an application with the Board for a pharmacy technician registration. The Board denied the application on May 8, 2018. By letter dated June 20, 2018, respondent appealed the denial of his registration application.

2. Complainant filed the Statement of Issues in her official capacity. Respondent timely filed a notice of defense.

Respondent's Conviction

3. On March 7, 2013, in *People v. Saladino* (Super. Ct. San Bernardino County, 2013, No. MSB1203450), respondent pled guilty to and was convicted of violating Penal Code section 647, subdivision (a) (disorderly conduct—lewd or dissolute conduct in a public place), a misdemeanor. The court found a factual basis for the plea. The court placed respondent on 36 months' probation on terms and conditions including that he serve 60 days in county jail commencing on May 1, 2013, with credit for five days served, pay fees and assessments totaling \$224, stay away from the victim, and violate no laws other than minor traffic laws. On July 1, 2013, the court ordered probation revoked due to respondent's failure to appear at the jail on May 1, 2013. Seven months later, on February 14, 2014, respondent appeared in court on the probation violation; the court reinstated probation, continued it on the original terms and conditions but added five days of jail time for the violation, and ordered respondent to report to the jail on March 7, 2014.

4. The circumstances underlying the conviction are that on October 29, 2012, in a philosophy class at San Bernardino Valley College, respondent exposed his erect penis to a classmate seated next to him.

5. Respondent has completed all terms of probation.

Duties of Pharmacy Technicians

6. Anna Yamada, an inspector for the Board, testified about the duties of pharmacy technicians. Yamada, a licensed pharmacist since 1999, has worked as an inspector for the Board for over 10 years, handling consumer complaints and investigating medication errors. She worked as a pharmacist and pharmacist in charge for Sav-On and as a staff pharmacist at an independent retail pharmacy. She has worked with and supervised more than 30 pharmacy technicians and is familiar with their duties and functions. Yamada testified that pharmacy technicians must know and comply with pharmacy law; they must complete 240 hours of training to obtain their license. They perform non-discretionary duties. They enter data, stock medicines, perform prescriptions intake, have unsupervised contact with patients (if in a retail setting) and provide medications, charge patients, attach labels, and keep records. They have complete access to all medicines in the pharmacy and to patient records and personal information, so honesty and integrity are critical character requirements; they must have the trust of their supervising staff pharmacists.

Mitigation

7. Respondent disclosed his conviction on his November 2017 Pharmacy Technician Application. In a letter to the Board, respondent contested the basis for his conviction:

I was falsely accused of exposing my body part during class at San Bernardino Valley College. I was found not guilty [of indecent exposure], but charged with Lewd [or] Dissolute conduct

in a Public place. There were [sic] no evidence presented and I took a plea bargain because I was told that the case will go to trial and if I lost in the trial they were to register me as a Sex offender. .

I know that terrible mistakes happened that will hunt [sic] me later in my life. These mistakes was [sic] a moral lesson on my part and promised myself that these mistakes will never happened [sic] again. [¶] . . . [¶]

I hope that you will give me a chance and I know I deserved one.

(Ex. 2.)

8. Respondent denied responsibility for any intentional actions leading to his conviction even though he was convicted of an intentional act. Although he denied deliberately exposing himself, he failed to explain why his purportedly unintentional exposure was a mistake and “a moral lesson.” Though he promised himself never to make “these mistakes” again, he failed to explain how he could avoid “these mistakes” if they were really inadvertent.

9. Respondent was seated in the front row of the classroom, wearing loose-fitting basketball shorts and a t-shirt because he intended to go straight to track practice after class. He testified that he had put his cell phone in his underpants to conceal it from the professor, who prohibited phones in the classroom. Respondent testified that, though he had hidden the phone in his underpants, he repeatedly used the phone for texting during the 90-minute class, without looking down and without lifting his shorts in such a way as to expose his penis. It is difficult to imagine how, exactly, it would be possible for respondent to use a phone hidden in his underpants, let alone without looking; respondent did not clarify this testimony.

10. Respondent concedes that he may have unintentionally revealed his penis to the neighboring student while using his concealed telephone, but insists it was not his intention to show her his genitals. He testified that he never made eye contact with the victim.

11. San Bernardino Community College District Police Department Officer K. Stills, the arresting officer, interviewed respondent on October 29, 2012. In his police report, Officer Stills wrote that respondent denied doing “what that blue eyed girl said I did.” (Ex. 5.) When Officer Stills replied that he had not mentioned anything about the person who had complained, respondent said he was sitting next to a “blue eyed girl,” that he was texting on his phone between his legs, and that “she made something up to get me in trouble.” (*Ibid.*) Officer Stills examined respondent’s cellphone and observed no texting activity on October 24, the date of the incident. Respondent speculated to Officer Stills that the victim might have heard of an earlier incident when respondent was in eighth grade and exposed himself to a girl; the police report does not reflect respondent providing any means by which the victim could have learned of that earlier incident.

12. About his probation violation for failing to report to jail to serve 55 days, respondent testified he was “confused” about the date, acknowledging that his failure showed “a lack of discipline.”

13. In view of the record as a whole, respondent’s mitigation testimony is not persuasive.

Rehabilitation

14. Respondent testified that he has a stable family life. He lives with his fiancée, their two children, ages eight and four, and his fiancée’s parents. After attending San Bernardino Valley College, respondent completed a pharmacy technician course and a HIPAA for Health Care Professionals Course at the Long Beach Job Corps Center, as well as a General Industry Safety and Health course from the Occupational Safety and Health Administration. While attending the Long Beach Job Corps Center program, respondent lived on the site in a coeducational dormitory for eight months, and testified he had no negative experiences with the police. Respondent coached flag football for three years for nine-to-eleven year old children for a community organization, a paid, not a volunteer, position. Respondent testified that he was hired for the position by Michael Bunch, and that he had disclosed his conviction to Bunch. Respondent offered no documentary evidence to corroborate that testimony, and his testimony about the disclosure is not credited.

15. Respondent currently works at CVS Specialty as a “packer.” Another employee receives prescriptions by telephone and sends the information to the back of the facility, where respondent works. He and other packers fill the prescriptions and package the medications to ship. He has been working there since January 2018 and has received excellent job reviews. Respondent testified that CVS wanted to hire him as a pharmacy technician; he told CVS he was expecting to receive a license, but then the license denial letter arrived. Respondent has no contact with any patients. If he were a licensed pharmacy technician there, he still would not have contact with consumers; he would fill prescriptions, have them checked by a pharmacist, make sure all medications are stocked, and do some packaging. Respondent understands that, at a different type of facility, he might have contact with consumers. He hopes to obtain a pharmacy technician license so he can further his career; he would like to work at a hospital pharmacy.

16. Respondent testified he disclosed his criminal conviction to CVS when he applied for his position there. He produced no corroborating written evidence of this assertion, or of his assertion that his supervisor is aware of the conviction, even though the record was held open to allow him to do so. His testimony about the disclosure, therefore, is not credited.

17. Respondent offered one character reference letter, written on Inglewood Unified School District letterhead and addressed “to whom it may concern,” from Ofelina Trowers, a family friend who has known respondent since he was a child. Ms. Trowers wrote that respondent “wants to give his children a better life” and that he has a “beautiful relationship” with his family. “No one deserves a chance more than [respondent]. Please consider allow[ing] this [to] be put behind [him] and let this beautiful person begin his life[.] [I]n my position of

Law Enforcement I work with Teenagers on [a] daily basis[.] [Respondent] is worth being a party [*sic*] of society making a difference.” (Ex. H.). It is not clear from the letter what Ms. Trowers wishes to allow respondent to put behind him or whether Ms. Trowers knows of respondent’s conviction or of his application to the Board.

LEGAL CONCLUSIONS

1. The Board’s highest priority is protection of the public. (Bus. & Prof. Code, § 4001.1.)¹

2. The Board may deny an application for licensure if the applicant has been convicted of a crime or done any act that, if done by a licentiate of the occupation in question, would be grounds for suspension or revocation of the license, so long as the act or crime is substantially related to the qualifications, functions, or duties of the business or profession for which an application is made. (§§ 480, subd. (a)(1) & (3), 490.) A crime or act is substantially related to the qualifications, functions, or duties of a licensee if it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770.) The Board may suspend or revoke a pharmacy technician license for a conviction of a substantially related crime. (§§ 4202, subd. (d), 4301, subd. (I).)

3. Cause exists to deny respondent’s pharmacy technician registration application for conviction of a crime substantially related to the qualifications, functions, or duties of a licensee, under section 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1770, based on the matters set forth in Factual Findings 3 through 5 and 7 through 13. Respondent was convicted of lewd conduct in a public place, a crime involving acts harmful and offensive to others and to the public, which is substantially related to the qualifications, functions, or duties of a licensee.

4. Cause exists to deny respondent’s pharmacy technician registration application for acts warranting denial of licensure, under section 480, subdivision (a)(3), in that respondent was convicted of a crime and committed acts that, if done by a licentiate, would be grounds for suspension or revocation of her license, as set forth in Factual Findings 3 through 5 and 7 through 13.

5. When deciding whether to issue or deny a license under section 480, the Board must evaluate the applicant’s rehabilitation and present eligibility for licensing by considering the following criteria: (1) the nature and severity of the applicant’s acts or offenses, (2) evidence of subsequent acts constituting a ground for denial, (3) time elapsed since the commission of the act or acts, (4) the applicant’s compliance with criminal probation terms, and (5) evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769, subd. (b).)

¹ All further statutory references are to the Business and Professions Code.

6. Respondent has not satisfied the relevant regulatory criteria for rehabilitation, as set forth in Factual Findings 7 through 17. Respondent has failed to demonstrate rehabilitation, which is required to assure that he will not again engage in activities of the sort that led to his conviction and pose an unacceptable risk to public health, safety, and welfare. On the one hand, six years have passed since respondent's conviction with no apparent further incidents. On the other hand, respondent violated the terms of his criminal probation. More importantly, at no time in the course of this hearing did respondent acknowledge the intentional nature of the act that led to his conviction.

7. Rehabilitation is a "state of mind," and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) To demonstrate rehabilitation, respondent must confront and admit his acts. His critical failure to truly accept responsibility for his criminal act does not reflect well on his ability to carry out the duty to the public of truthfulness and integrity required of a licensed pharmacy technician. (See, e.g., *In re Gehring* (1943) 22 Cal.2d 708.)

8. Given the nature of respondent's misconduct, and his unwillingness to confront that misconduct at this hearing or to reveal his conviction to his employer, supervisors, and friends, respondent failed to establish by a preponderance of the evidence that he is not likely to repeat the act that led to his conviction. Though respondent does not come into contact with consumers at his current position, licensure would authorize him to have contact with consumers while performing his job duties. More time, a true understanding of what led him to commit his crime, and acceptance and acknowledgment of his criminal behavior are needed before respondent can be considered an appropriate candidate for licensure.

ORDER

Respondent Anthony L. Saladino's application for a pharmacy technician license is denied.

DATED: February 14, 2019

DocuSigned by:

Howard W. Cohen

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HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 6491

14 **ANTHONY L. SALADINO**

STATEMENT OF ISSUES

15 Pharmacy Technician Applicant

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 15, 2017, the Board of Pharmacy (Board) received an
23 application for a Pharmacy Technician from Anthony L. Saladino (Respondent). On or about
24 November 8, 2017, Anthony L. Saladino certified under penalty of perjury to the truthfulness of
25 all statements, answers, and representations in the application. The Board denied the application
26 on May 8, 2018.

27 ///

28 ///

1 circumstances surrounding the conviction are that on or about October 29, 2012, the victim
2 reported to campus police the Respondent exposed his erect penis to her during class.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

5 7. Respondent's application is subject to denial under section 480, subdivision (a)(3), in
6 that Respondent committed an act which if done by a licentiate of the business and profession,
7 would be grounds for suspension or revocation of his license. Complainant refers to, and by this
8 reference incorporates the allegations set forth above in paragraph 6, as though set forth fully.

9 **PRAYER**

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

- 12 1. Denying the application of Anthony L. Saladino for a Pharmacy Technician; and
13 2. Taking such other and further action as deemed necessary and proper.

14
15
16 DATED:

August 4, 2018 *Virginia Herold*

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

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