

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
In the Matter of the Statement of Issues Against:
VAN ROWIN FERRER MANLAMBUS
Pharmacy Technician Registration Applicant Respondent.

Agency Case No. 7186

OAH No. 2022060773

DECISION AFTER REJECTION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on September 22, 2022.

Alan Macina, Deputy Attorney General, appeared and represented complainant Anne Sodergren, Executive Officer of the California Board of Pharmacy (Board).

Van Rowin Ferrer Manlambus, respondent, appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 22, 2022. On October 24, 2023, the ALJ issued a Proposed Decision.

On December 28, 2022, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision and notified the parties that the Board would decide the case upon the record, including written argument. In an order dated January 20, 2023, the Board notified the parties that written argument was due on or before February 20, 2023. The Board timely received written argument from both respondent and complainant, and received supplemental argument from respondent after

the due date but the Board considered the late supplemental argument submitted by respondent.

PROTECTIVE AND SEALING ORDER

The records at Exhibits 8, 9, D, and E are subject to a protective order. Any document received as evidence in this matter that contains these records shall be redacted before any disclosure to the public. No court reporter or transcription service shall transcribe the contents of these records, but shall instead refer to them solely as "records." To protect privacy and confidential personal information from inappropriate disclosure, Exhibits 8, 9, D, and E are ordered sealed. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the document subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 5, 2020, the board received from respondent a pharmacy technician application. Respondent signed the application under penalty of perjury on October 30, 2020.

2. On July 23, 2021, the board denied the application. On July 27, 2021, the board received respondent's timely request to appeal the denial of the application.

3. On October 11, 2021, while acting in her official capacity, complainant filed the Statement of Issues, which alleged cause for denial of respondent's application due to his criminal convictions.

4. An administrative hearing followed.

Convictions

5. On November 29, 2018, in court-martial action *United States v. Vanrowin F.*

Manlambus, held at Joint Base Pearl Harbor-Hickam, Hawaii, Convening Order No. 01-19, respondent was found guilty of Uniform Code of Military Justice, Article 80, section 120BB1, attempted sexual assault of a child, and section 120BC3, attempted sexual abuse of a child. Respondent was sentenced to a grade reduction of E-7 to E-6 and dishonorably discharged from the United States Navy (Navy), and ordered to register as a sex offender in Hawaii. Respondent was not ordered to serve any time in the brig, and he was not placed on probation or parole. He appealed to the Court of Criminal Appeals for the United States Navy-Marine Corps in *United States v. Vanrowin F. Manlambus*, Appeal No. 201900080. The Court of Criminal Appeals affirmed the guilty findings and sentencing, and rendered the conviction as final on May 27, 2020.

6. The circumstances lead to respondent's convictions are described in the record of the Court of Criminal Appeals. Respondent was a hospital corpsman, Chief Petty Officer, grade E-7, in the Navy, and stationed in Hawaii when he was sent on temporary duty to Camp Foster in Okinawa, Japan. While in Okinawa, he answered an online post titled, "Okinawa Only HMU" by a female named Marie who claimed to be 15 years old. Respondent engaged in a conversation about sexual activity with Marie, and they arranged to meet at her mother's apartment at Camp Foster. Marie asked respondent to bring Snickers or gummy bears. Respondent arrived at the apartment with both candies, and when he stepped off the elevator on the floor of Marie's apartment building, there were Naval Criminal Investigative Service (NCIS) agents waiting to arrest him. Respondent claimed he thought Marie was a military spouse who was lying about her age, and she was referring to her husband when she talked about her "mom." He admitted to travelling to Marie's apartment to have sex with her.

NCIS conducted a search of respondent's cell phone that showed an internet searched for "how do you know if a minor is trying to bait you" and "pedobaiting – scam

online predators.”

Testimony and Report of Board Inspector

7. The following is a summary of the credible testimony and report of Christopher Woo, Pharm.D. He has been a board inspector for nine years and a licensed pharmacist since 1988. His duties as a board inspector include inspecting pharmacies, investigating complaints, and educating licensees and the public. Prior to being employed by the board, Dr. Woo was a pharmacist-in-charge for staff pharmacists for several independent and chain pharmacies. As a pharmacist, his duties also were to verify prescriptions, answer questions, review patient profiles, and supervise pharmacy technicians. A pharmacy technician is required to complete a technician program and become registered, and authorized to perform non-discretionary tasks such as removing drug stock bottles from the shelves, and inputting records to access patient records containing dates of birth, addresses, past prescribed drugs, and allergies. A pharmacist-in-charge is responsible for the security of the pharmacy and cannot be at the pharmacy all of the time, so there is a good deal of trust in the staff pharmacists and other people who work at the pharmacy. A pharmacy technician is often the first person who speaks to a patient and answers questions.

8. Dr. Woo is familiar with respondent’s case because he was assigned to review his application and background, and he determined respondent’s actions were considered unprofessional conduct and there was a concern to allow him to become a registered pharmacy technician. Dr. Woo assessed that respondent’s actions showed bad judgment and a lack of self-control, and these are qualities needed of people who work at a pharmacy because there is not always someone watching over you and a pharmacy technician has access to patient records. Dr. Woo said there is also a concern for patient safety because respondent has shown he cannot follow the law and his past actions were

troublesome.

Respondent's Evidence

9. The following is a summary of respondent's testimony and written narrative. Respondent understands what he did was wrong and the repercussions caused by his actions. He joined the Navy in 1988 and served for 21 years. He was stationed in military clinics and ships, and he spent most of his time serving alongside the Marines. He was a Chief Hospital Corpsman and he mainly worked as a preventive medicine technician administering immunizations, tuberculosis screenings, physical examinations, and medications. He was assigned to WESTPAC on USS Constellation, USS Cleveland, Marine Corps Base Miramar, two deployments to Iraq caring for wounded Marines, Marine Corps Base Camp Pendleton, Naval Base Ventura/Port Hueneme, and Hawaii.

10. After he was convicted, he continued to serve in his Navy unit for one and half years until he was dishonorably discharged. His conviction barred him from receiving any military benefits and/or military retirement. While he was appealing his conviction, he completed a pharmacy technician program, completed an internship at Walgreen's in Hawaii, and began working at a Long's Drugs pharmacy in Hawaii. When he and his family moved back to California in January 2021, he transferred his job as a pharmacy clerk to CVS, which is affiliated with Long's Drugs. His current duties include inputting patient data, answering phone calls, and other tasks. He does everything except filling medications off the shelf. He been working in this capacity at the same CVS for almost two years, plus his time being employed at Long's Drugs in Hawaii. He wants to support his wife and children, and pursue a position as a pharmacy technician to have a better income for his family. It has been a "long journey from his career in the military" to where he is right now. He stated, "If I didn't learn from this mistake, I don't know. I thank God, he blessed me with everything that I have right now . . . [in the] military I made a

great mistake, it cost me everything, I really did learn." He stated, "I'm not going to mess up my family and career ever again. I'm just going to . . . continue on with my better path and doing this right."

11. His conduct that led to his conviction was a mistake that he will never do again in his life. He realized that what he did was a crime even though they were attempts. He regrets trying to cheat on his wife, and she has forgiven him but every day he looks at her, he has regret. He knows he failed his children and he has a stigma. This was the only illegal conduct he did in his life and it cost him his life, career, and some friendships. He truly regrets his actions and stated, "I own up on my mistakes." He was forthright and contrite in his testimony.

12. The following is a summary of the testimony and letter of support by Marklester Ecalnir. He is a retired Marine Corps Gunnery Sergeant. He met respondent in 1998 and they have been friends ever since. He is one of respondent's closest friends both personally and professionally. Their wives are close friends. When he first heard about respondent's incident he was "really mad" and it threw him off because it was outside of respondent's character to do this. At the time, he asked respondent, "What the hell were you thinking by doing that?" He knows what respondent did was very wrong, and it flawed his character. Respondent had no character flaws before this incident, and this single set-back should not define respondent. He believes that respondent should be given a second chance because respondent is doing everything he can to makes things right, and working in the medical field is all respondent knows and is good at doing. He said respondent's mistake was grievous, but we are all humans; this was a flaw in his decision-making at that time; and respondent never made such mistakes before or after this incident. He noted respondent's punishment in the military was dishonorable discharge and reduction in rank, but respondent was not sentenced to confinement in the

brig, which often happens in court martial cases.

13. A report of clinical and forensic psychological evaluation, dated November 23, 2018, by Marvin W. Acklin, Ph.D., indicated respondent had anxiety and depression due to his legal matter and pending military trial. He had no history of mental health problems, no child pornography was found on his electronic devices, and this was his first incident of attempting to entice a minor using online resources. He did not demonstrate violent tendencies, and he “scored in the very lowest categories for recidivistic risk.”

14. A certificate from Kapi’olani Community College, dated July 31, 2020, indicated respondent completed 305 hours and completed the pharmacy technician program.

15. A certificate from Pharmacy Technician Certification Board, dated December 11, 2020, indicated respondent completed certification requirements to be designated a certified pharmacy technician (CPhT).

16. Respondent submitted the following letters of support:

- A support letter from Emily Encarnacion, Pharm.D., dated June 15, 2022, indicating she works as a pharmacist at CVS where respondent works. He has “provided tremendous assistance by covering shifts to many of CVS stores in the district” and he is “respectful, patient, dependable, courteous, [has an] outstanding work ethic and always takes constructive criticism in a positive way.” She hopes respondent is given a chance to obtain his pharmacy technician license.
- A support letter from Tracy Hudson, undated, indicating she is a manager at the CVS pharmacy and she has worked with respondent for two years. He has been “very professional, dependable, and responsible.” He is a

“favorite in our district and managers of stores want him to work in their pharmacies.” He has the “skills, knowledge, and dedication to become a licensed pharmacy technician” and if “given the change, he will be an asset to any employer.”

- A support letter from Yianoula Warne, dated July 18, 2022, indicating she is a manager at the CVS pharmacy where respondent works. He has a “positive attitude and requires little to no supervision” . . . [and] he is also great with customer service and a fantastic team player.”
- A support letter from Captain Mark Swearngin, U.S. Navy, dated November 18, 2018, indicating he was the first person respondent called when he was arrested, and he saw the military charges when they were filed. He worked daily with respondent in the Navy. He wrote, “HMC Manlambus is a kind and caring person who has made mistakes, he has shown over years of service he cares for others and he cares deeply for his family and their futures.”
- A support letter from Commander Mary Piliwale, U.S. Navy, dated October 24, 2018, indicating she was the director of respondent’s department in the military, and she was aware of the incident that occurred with respondent. She wrote, “[D]espite the allegations, I would like to restate my wholehearted support for HMC Manlambus and have known him as a reliable, trustworthy, and a good human being.”
- A support letter from Lieutenant Emiliano Rabor, U.S. Navy, dated November 20, 2018, indicating he was one of respondent’s managing officers at the time of the incident, and he knew of the incident and charges. He wrote that respondent’s conduct had a “grave repercussion for

his family and his career” and he hoped for the best outcome for respondent and that he continued to be a “valuable member of the society.”

- A support letter from Lieutenant Michael Bowe-Rahming, dated October 24, 2018, indicating he was aware of respondent’s incident and charges. He always observed respondent to have professionalism and integrity while they served together in the military, and he never observed respondent to display any character violations of the “Navy Core Values” on or off duty.
- A support letter from Medical Corpsman Dameon Webb, dated November 19, 2018, indicating he worked with respondent in the same military unit. He was very surprised to hear of respondent’s incident. He hoped the military court would consider his opinion of respondent’s “true character” as a “hard- working professional with a positive attitude and very caring in nature.”

LEGAL CONCLUSIONS

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; Coffin v. Department of Alcoholic Beverage Control (2006) 139 Cal.App.4th 471, 475) The standard of proof upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

2. The board may deny a license on the grounds that the applicant has been convicted of a crime within the preceding seven years from the date of application that is “substantially related to the qualifications, functions, or duties of the business or profession for which the application was made, regardless of whether the applicant was incarcerated for that crime.” (Bus. & Prof. Code, § 480, subd. (a)(1).)

3. The board shall develop criteria to evaluate the rehabilitation of a person when considering the denial of a license. (Bus. & Prof. Code, § 482, subd. (a).)

4. The record of a conviction of a crime shall be conclusive evidence of the fact that the conviction occurred. (Bus. & Prof. Code, § 493, subd. (a).)

5. The criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession shall include: the nature and gravity of the offense; the number of years elapsed since the date of the offense; the nature and duties of the profession. The board shall not bar an applicant solely on the type of conviction without considering evidence of rehabilitation. (Bus. & Prof. Code, § 493, subd. (b)(1) and (b)(2).)

6. Unprofessional conduct is an act that would be grounds for discipline if done by a licensed pharmacy technician. Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. (Bus. & Prof. Code, §4301, subd. (l).)

7. When the board denies an application, the applicant may reapply for a license one year after the effective date of the denial. The board will consider all evidence of rehabilitation upon reapplication. (Cal. Code Regs., tit. 16, § 1768.)

8. For the purpose of a denial of a license, a crime shall be considered substantially related to the qualifications, functions, or duties of the practice if to a "substantial degree it evidences present or potential unfitness of an applicant or 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 will consider the following criteria in determining the substantial relationship determination: (1) nature and gravity of the offense; (2) number of years elapsed since the date of the offense; and (3) nature and duties of the practice. (Id.)

9. In reaching a decision on a disciplinary action under the Administrative Procedure Act (Gov. Code, § 11400 et seq.), the board must consider the “Disciplinary Guidelines,” as revised in February 2017 (Guidelines). Deviation from the Guidelines, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines the facts of a particular case warrant such a deviation, such as the presence of mitigating factors, the age of the case, and evidentiary problems. (Cal. Code Regs., tit. 16, § 1760.)

10. When considering the denial of a license under Business and Professions Code section 480, and in evaluating the rehabilitation of respondent and if respondent completed the criminal sentence without a violation of parole or probation, the board must consider the following criteria: (1) The nature and gravity of the crime; (2) lengths of parole or probation; (3) extent to which parole or probation was lengthened or shortened; (4) terms or conditions of parole or probation, and the extent they bear on the applicant’s rehabilitation; and (5) extent the terms or conditions of parole or probation were modified. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(1).)

11. When considering the denial of a license under Business and Professions Code section 480, and in evaluating the rehabilitation of respondent and if respondent has not completed the criminal sentence without a violation of parole or probation and did not make a showing of rehabilitation according to the five criteria above, the board must consider the following criteria: (1) The nature and gravity of the acts or offenses under consideration as grounds for denial; (2) evidence of any acts or crimes committed subsequent to the acts or crimes under consideration as grounds for denial; (3) the time that has elapsed since commission of the acts or offenses; (4) whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant; and (5) any evidence of rehabilitation submitted by the

applicant. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(2).)

EVALUATION

12. Respondent suffered military convictions for attempted sexual assault and attempted sexual abuse of a minor in 2018. These crimes, as well as the underlying acts, are substantially related to the qualifications, functions and duties of a licensee because the underlying conduct evidences a potential unfitness to perform the functions authorized by a pharmacy technician in a manner consistent with the public health, safety, or welfare. Respondent's criminal record would be grounds to discipline a licensed pharmacy technician because the convictions and underlying acts are evidence of unprofessional conduct.

13. As such, cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a)(1), and section 4301, subdivision (l), in that respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as set forth above.

14. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding one who has achieved "reformation and regeneration." (Pacheco v. State Bar (1987) 43 Cal.3d 1041, 1058.)

15. In this case, respondent's acts leading to his convictions were egregious. However, he has acknowledged his mistake and taken responsibility for his actions. He paid dearly for his error. He lost his more than 20-year career in the Navy and was dishonorably discharged. He will never be eligible to receive any military benefits for himself or his family, and he will never receive a military pension despite his years of service. However, the military did not place him on probation or parole, and did not sentence him to be incarcerated. His former commanding officers wrote strong letters of

support during his criminal trial, and noted he was an excellent serviceman and this incident was out of character for him. He had to regain the trust of his wife and children, and he expressed the regret he faces each day when he looks at his wife. He made a single mistake in his unscathed military career and lifetime as a family man, and his life will never be the same. He has to face his new reality, which has been to own up to his terrible mistake and find a new way to support his family. He is trying to transfer his 20-year military career as a medic into the civilian world of pharmacy. Respondent's pharmacy colleagues also wrote strong letters of support indicating he has excellent work skills as a pharmacy clerk; he is trustworthy, professional, and a team player; and if given a chance, he would be an excellent pharmacy technician.

16. Evidence from outside sources, such as the letters from respondent's military and pharmacy colleagues, lends credibility to his testimony of rehabilitation. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See, *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.)

17. Respondent's convictions occurred four years ago. There was no evidence of any subsequent contacts with law enforcement. Courts have found that "the evidentiary significance of . . . 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.)

18. A pharmacy technician is responsible for dispensing dangerous drugs and controlled substances, and is entrusted with financial, personal, and confidential information about clients. Also, pharmacy technicians have interface with patients, including asking questions and dispensing medications. Moreover, during the COVID

pandemic, pharmacy technicians conducted testing on patients and administered vaccines to the public, including minors, if delegated those tasks by the supervising pharmacist. Pharmacy technicians may still be administering some vaccines to the public at some pharmacies in reliance on certain federal declarations under Public Readiness and Emergency Preparedness Act. There are also proposals or requests to expand permanently the scope of authority for pharmacist technicians to what they could perform under State waivers during the COVID pandemic. The statutes relating to licensing are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Administrative actions regarding a state-issued license are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*, see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

19. Given the evidence of rehabilitation in this case and the respondent's prior work in the healthcare field, the Board believes that the appropriate level of discipline is to issue a pharmacy technician registration to respondent, immediately revoke it, and place it on probation with standard terms and conditions and one optional condition. In light of the rehabilitation established by respondent, a three-year term of probation will adequately protect the public subject to the need to obtain a clinical evaluation as detailed in this order. The Board's primary objective is to protect the public and given the expanded duties and expanded patient contact pharmacy technicians have been doing since the COVID pandemic, the Board must be sure that the respondent is safe to practice in this patient-interactive environment.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a Pharmacy Technician registration, a Pharmacy Technician registration shall be issued to Van Rowin Ferrer Manlambus and immediately revoked; the order of revocation is stayed and respondent's Pharmacy Technician registration is placed on probation for three years upon the following terms and conditions:

1. 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; and
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license 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.

Failure to timely report such occurrence shall be considered a violation of probation.

2. 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.

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.

3. 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 for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. COOPERATE WITH BOARD STAFF

Respondent shall timely 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, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. REPORTING OF EMPLOYMENT AND NOTICE TO EMPLOYERS

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7186 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 ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known.

Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring.

Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

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 (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in

case number 7186, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6849, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. 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 an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a Pharmacy Technician, or any position for which a Pharmacy Technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. NOTIFICATION OF CHANGE(S) IN NAME, ADDRESS(ES), OR PHONE NUMBER(S)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

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.

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 Pharmacy Technician 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 practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the 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 pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license 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, including any outstanding costs.

10. CERTIFICATION PRIOR TO RESUMING WORK

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion

of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous 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, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be a violation of probation.

11. PRACTICE REQUIREMENT – EXTENSION 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 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a Pharmacy Technician in California for the minimum number of hours in any calendar month for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours

of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a Pharmacy Technician in California for the minimum number of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

12. VIOLATION OF PROBATION

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that 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. The board or its designee may post a notice of the extended probation period on its website.

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. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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 or its designee indicating successful completion of probation, respondent's license will be fully restored.

14. CLINICAL DIAGNOSTIC EVALUATION

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the board or its designee, respondent shall undergo, at his own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the board or its designee. The approved evaluator shall be provided with a copy of the board's statement of issues and this decision after rejection.

Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

This Decision shall become effective at 5:00 p.m. on May 26, 2023.

It is so ORDERED on April 26, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

VAN ROWIN FERRER MANLAMBUS

Pharmacy Technician Registration Applicant

Respondent

Agency Case No. 7186

OAH No. 2022060773

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) and exhibits, of the hearing (Administrative Record), and upon such written argument as the parties may wish to submit. The Administrative Record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **February 20, 2023**.

It is so ORDERED on January 20, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

VAN ROWIN FERRER MANLAMBUS

Pharmacy Technician Registration Applicant

Respondent

Agency Case No. 7186

OAH No. 2022060773

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on December 28, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

VAN ROWIN FERRER MANLAMBUS

Pharmacy Technician Registration Applicant

Respondent.

Agency Case No. 7186

OAH No. 2022060773

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on September 22, 2022.

Alan Macina, Deputy Attorney General, appeared and represented complainant Anne Sodergren, Executive Officer of the California Board of Pharmacy (Board).

Van Rowin Ferrer Manlambus, respondent, appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 22, 2022.

PROTECTIVE AND SEALING ORDER

The records at Exhibits 8, 9, D, and E are subject to a protective order. Any document received as evidence in this matter that contains these records shall be redacted before any disclosure to the public. No court reporter or transcription service shall transcribe the contents of these records, but shall instead refer to them solely as "records." To protect privacy and confidential personal information from inappropriate disclosure, Exhibits 8, 9, D, and E are ordered sealed. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the document subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 5, 2020, the board received from respondent a pharmacy technician application. Respondent signed the application under penalty of perjury on October 30, 2020.
2. On July 23, 2021, the board denied the application. On July 27, 2021, the board received respondent's timely request to appeal the denial of the application.
3. On October 11, 2021, while acting in her official capacity, complainant filed the Statement of Issues, which alleged cause for denial of respondent's application due to his criminal convictions.
4. This hearing followed.

Convictions

5. On November 29, 2018, in court-martial action *United States v. Vanrowin F. Manlambus*, held at Joint Base Pearl Harbor-Hickam, Hawaii, Convening Order No. 01-19, respondent was found guilty of Uniform Code of Military Justice, Article 80, section 120BB1, attempted sexual assault of a child, and section 120BC3, attempted sexual abuse of a child. Respondent was sentenced to a grade reduction of E-7 to E-6 and dishonorably discharged from the United States Navy (Navy), and ordered to register as a sex offender in Hawaii. Respondent was not ordered to serve any time in the brig and he was not placed on probation or parole. He appealed to the Court of Criminal Appeals for the United States Navy-Marine Corps in *United States v. Vanrowin F. Manlambus*, Appeal No. 201900080. The Court of Criminal Appeals affirmed the guilty findings and sentencing, and rendered the conviction as final on May 27, 2020.

6. The circumstances lead to respondent's convictions are described in the record of the Court of Criminal Appeals. Respondent was a hospital corpsman, Chief Petty Officer, grade E-7, in the Navy, and stationed in Hawaii when he was sent on temporary duty to Camp Foster in Okinawa, Japan. While in Okinawa, he answered an online post titled, "Okinawa Only HMU" by a female named Marie who claimed to be 15 years old. Respondent engaged in a conversation about sexual activity with Marie, and they arranged to meet at her mother's apartment at Camp Foster. Marie asked respondent to bring Snickers or gummy bears. Respondent arrived at the apartment with both candies, and when he stepped off the elevator on the floor of Marie's apartment building, there were Naval Criminal Investigative Service (NCIS) agents waiting to arrest him. Respondent claimed he thought Marie was a military spouse who was lying about her age, and she was referring to her husband when she talked about her "mom." He admitted to travelling to Marie's apartment to have sex with her.

NCIS conducted a search of respondent's cell phone that showed an internet searched for "how do you know if a minor is trying to bait you" and "pedobaiting – scam online predators."

Testimony and Report of Board Inspector

7. The following is a summary of the credible testimony and report of Christopher Woo, Pharm.D. He has been a board inspector for nine years and a licensed pharmacist since 1988. His duties as a board inspector include inspecting pharmacies, investigating complaints, and educating licensees and the public. Prior to being employed by the board, Dr. Woo was a pharmacist-in-charge for staff pharmacists for several independent and chain pharmacies. As a pharmacist, his duties also were to verify prescriptions, answer questions, review patient profiles, and supervise pharmacy technicians. A pharmacy technician is required to complete a technician program and become registered, and perform non-discretionary tasks such as removing drug stock bottles from the shelves, and inputting records to access patient records containing dates of birth, addresses, past prescribed drugs, and allergies. A pharmacist-in-charge is responsible for the security of the pharmacy and cannot be at the pharmacy all of the time, so there is a good deal of trust in the staff pharmacists and other people who work at the pharmacy. A pharmacy technician is often the first person who speaks to a patient and answers questions.

8. Dr. Woo is familiar with respondent's case because he was assigned to review his application and background, and he determined respondent's actions were considered unprofessional conduct and there was a concern to allow him to become a registered pharmacy technician. Dr. Woo assessed that respondent's actions showed bad judgment and a lack of self-control, and these are qualities needed of people who work at a pharmacy because there is not always someone watching over you and a

pharmacy technician has access to patient records. Dr. Woo said there is also a concern for patient safety because respondent has shown he cannot follow the law and his past actions were troublesome.

Respondent's Evidence

9. The following is a summary of respondent's testimony and written narrative. Respondent understands what he did was wrong and the repercussions caused by his actions. He joined the Navy in 1988 and served for 21 years. He was stationed in military clinics and ships, and he spent most of his time serving alongside the Marines. He was a Chief Hospital Corpsman and he mainly worked as a preventive medicine technician administering immunizations, tuberculosis screenings, physical examinations, and medications. He was assigned to WESTPAC on USS Constellation, USS Cleveland, Marine Corps Base Miramar, two deployments to Iraq caring for wounded Marines, Marine Corps Base Camp Pendleton, Naval Base Ventura/Port Hueneme, and Hawaii.

10. After he was convicted, he continued to serve in his Navy unit for one and half years until he was dishonorably discharged. His conviction barred him from receiving any military benefits and/or military retirement. While he was appealing his conviction, he completed a pharmacy technician program, completed an internship at Walgreen's in Hawaii, and began working at a Long's Drugs pharmacy in Hawaii. When he and his family moved back to California in January 2021, he transferred his job as a pharmacy clerk to CVS, which is affiliated with Long's Drugs. His current duties include inputting patient data, answering phone calls, and other tasks. He does everything except filling medications off the shelf. He been working in this capacity at the same CVS for almost two years, plus his time being employed at Long's Drugs in Hawaii. He wants to support his wife and children, and pursue a position as a pharmacy technician

to have a better income for his family. It has been a "long journey from his career in the military" to where he is right now. He stated, "If I didn't learn from this mistake, I don't know. I thank God, he blessed me with everything that I have right now . . . [in the] military I made a great mistake, it cost me everything, I really did learn." He stated, "I'm not going to mess up my family and career ever again. I'm just going to . . . continue on with my better path and doing this right."

11. His conduct that lead to his conviction was a mistake that he will never do again in his life. He realized that what he did was a crime even though they were attempts. He regrets trying to cheat on his wife, and she has forgiven him but every day he looks at her, he has regret. He knows he failed his children and he has a stigma. This was the only illegal conduct he did in his life and it cost him his life, career, and some friendships. He truly regrets his actions and stated, "I own up on my mistakes." He was forthright and contrite in his testimony.

12. The following is a summary of the testimony and letter of support by Marklester Ecalnir. He is a retired Marine Corps Gunnery Sergeant. He met respondent in 1998 and they have been friends ever since. He is one of respondent's closet friends both personally and professionally. Their wives are close friends. When he first heard about respondent's incident he was "really mad" and it threw him off because it was outside of respondent's character to do this. At the time, he asked respondent, "What the hell were you thinking by doing that?" He knows what respondent did was very wrong, and it flawed his character. Respondent had no character flaws before this incident, and this single set-back should not define respondent. He believes that respondent should be given a second chance because respondent is doing everything he can to makes things right, and working in the medical field is all respondent knows and is good at doing. He said respondent's mistake was grievous, but we are all

humans; this was a flaw in his decision-making at that time; and respondent never made such mistakes before or after this incident. He noted respondent's punishment in the military was dishonorable discharge and reduction in rank, but respondent was not sentenced to confinement in the brig, which often happens in court martial cases.

13. A report of clinical and forensic psychological evaluation, dated November 23, 2018, by Marvin W. Acklin, Ph.D., indicated respondent had anxiety and depression due to his legal matter and pending military trial. He had no history of mental health problems, no child pornography was found on his electronic devices, and this was his first incident of attempting to entice a minor using online resources. He did not demonstrate violent tendencies, and he "scored in the very lowest categories for recidivistic risk."

14. A certificate from Kapi'olani Community College, dated July 31, 2020, indicated respondent completed 305 hours and completed the pharmacy technician program.

15. A certificate from Pharmacy Technician Certification Board, dated December 11, 2020, indicated respondent completed certification requirements to be designated a certified pharmacy technician (CPhT).

16. Respondent submitted the following letters of support:

- A support letter from Emily Encarnacion, Pharm.D., dated June 15, 2022, indicating she works as a pharmacist at CVS where respondent works. He has "provided tremendous assistance by covering shifts to many of CVS stores in the district" and he is "respectful, patient, dependable, courteous, [has an] outstanding work ethic and always takes constructive criticism in a

positive way.” She hopes respondent is given a chance to obtain his pharmacy technician license.

- A support letter from Tracy Hudson, undated, indicating she is a manager at the CVS pharmacy and she has worked with respondent for two years. He has been “very professional, dependable, and responsible.” He is a “favorite in our district and managers of stores want him to work in their pharmacies.” He has the “skills, knowledge, and dedication to become a licensed pharmacy technician” and if “given the change, he will be an asset to any employer.”
- A support letter from Yianoula Warne, dated July 18, 2022, indicating she is a manager at the CVS pharmacy where respondents works. He has a “positive attitude and requires little to no supervision” . . . [and] he is also great with customer service and a fantastic team player.”
- A support letter from Captain Mark Swearngin, U.S. Navy, dated November 18, 2018, indicating he was the first person respondent called when he was arrested, and he saw the military charges when they were filed. He worked daily with respondent in the Navy. He wrote, “HMC Manlambus is a kind and caring person who has made mistakes, he has shown over years of service he cares for others and he cares deeply for his family and their futures.”
- A support letter from Commander Mary Piliwale, U.S. Navy, dated October 24, 2018, indicating she was the director of respondent’s department in the military, and she was aware of the incident that occurred with respondent. She wrote, “[D]espite the allegations, I would like to restate my

wholehearted support for HMC Manlambus and have known him as a reliable, trustworthy, and a good human being.”

- A support letter from Lieutenant Emiliano Rabor, U.S. Navy, dated November 20, 2018, indicating he was one of respondent’s managing officers at the time of the incident, and he knew of the incident and charges. He wrote that respondent’s conduct had a “grave repercussion for his family and his career” and he hoped for the best outcome for respondent and that he continued to be a “valuable member of the society.”
- A support letter from Lieutenant Michael Bowe-Rahming, dated October 24, 2018, indicating he was aware of respondent’s incident and charges. He always observed respondent to have professionalism and integrity while they served together in the military, and he never observed respondent to display any character violations of the “Navy Core Values” on or off duty.
- A support letter from Medical Corpsman Dameon Webb, dated November 19, 2018, indicating he worked with respondent in the same military unit. He was very surprised to hear of respondent’s incident. He hoped the military court would consider his opinion of respondent’s “true character” as a “hard-working professional with a positive attitude and very caring in nature.”

LEGAL CONCLUSIONS

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; *Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 475) The standard of proof

upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

2. The board may deny a license on the grounds that the applicant has been convicted of a crime within the preceding seven years from the date of application that is "substantially related to the qualifications, functions, or duties of the business or profession for which the application was made, regardless of whether the applicant was incarcerated for that crime." (Bus. & Prof. Code, § 480, subd. (a)(1).)

3. The board shall develop criteria to evaluate the rehabilitation of a person when considering the denial of a license. (Bus. & Prof. Code, § 482, subd. (a).)

4. The record of a conviction of a crime shall be conclusive evidence of the fact that the conviction occurred. (Bus. & Prof. Code, § 493, subd. (a).)

5. The criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession shall include: the nature and gravity of the offense; the number of years elapsed since the date of the offense; the nature and duties of the profession. The board shall not bar an applicant solely on the type of conviction without considering evidence of rehabilitation. (Bus. & Prof. Code, § 493, subd. (b)(1) and (b)(2).)

6. Unprofessional conduct is an act that would be grounds for discipline if done by a licensed pharmacy technician. Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. (Bus. & Prof. Code, §4301, subd. (l).)

7. When the board denies an application, the applicant may reapply for a license one year after the effective date of the denial. The board will consider all evidence of rehabilitation upon reapplication. (Cal. Code Regs., tit. 16, § 1768.)

8. For the purpose of a denial of a license, a crime shall be considered substantially related to the qualifications, functions, or duties of the practice if to a "substantial degree it evidences present or potential unfitness of an applicant or 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 will consider the following criteria in determining the substantial relationship determination: (1) nature and gravity of the offense; (2) number of years elapsed since the date of the offense; and (3) nature and duties of the practice. (*Id.*)

9. In reaching a decision on a disciplinary action under the Administrative Procedure Act (Gov. Code, § 11400 et seq.), the board must consider the "Disciplinary Guidelines," as revised in February 2017 (Guidelines). Deviation from the Guidelines, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines the facts of a particular case warrant such a deviation, such as the presence of mitigating factors, the age of the case, and evidentiary problems. (Cal. Code Regs., tit. 16, § 1760.)

10. When considering the denial of a license under Business and Professions Code section 480, and in evaluating the rehabilitation of respondent and if respondent completed the criminal sentence without a violation of parole or probation, the board must consider the following criteria: (1) The nature and gravity of the crime; (2) lengths of parole or probation; (3) extent to which parole or probation was lengthened or shortened; (4) terms or conditions of parole or probation, and the extent they bear on

the applicant's rehabilitation; and (5) extent the terms or conditions of parole or probation were modified. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(1).)

11. When considering the denial of a license under Business and Professions Code section 480, and in evaluating the rehabilitation of respondent and if respondent has not completed the criminal sentence without a violation of parole or probation and did not make a showing of rehabilitation according to the five criteria above, the board must consider the following criteria: (1) The nature and gravity of the acts or offenses under consideration as grounds for denial; (2) evidence of any acts or crimes committed subsequent to the acts or crimes under consideration as grounds for denial; (3) the time that has elapsed since commission of the acts or offenses; (4) whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant; and (5) any evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(2).)

EVALUATION

12. Respondent suffered military convictions for attempted sexual assault and attempted sexual abuse of a minor in 2018. These crimes, as well as the underlying acts, are substantially related to the qualifications, functions and duties of a licensee because the underlying conduct evidences a potential unfitness to perform the functions authorized by a pharmacy technician in a manner consistent with the public health, safety, or welfare. Respondent's criminal record would be grounds to discipline a licensed pharmacy technician because the convictions and underlying acts are evidence of unprofessional conduct.

13. As such, cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a)(1), and section 4301, subdivision (l),

in that respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as set forth above.

14. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

15. In this case, respondent's acts leading to his convictions were egregious. However, he has acknowledged his mistake and taken responsibility for his actions. He paid dearly for his error. He lost his more than 20-year career in the Navy and was dishonorably discharged. He will never be eligible to receive any military benefits for himself or his family, and he will never receive a military pension despite his years of service. However, the military did not place him on probation or parole, and did not sentence him to be incarcerated. His former commanding officers wrote strong letters of support during his criminal trial, and noted he was an excellent serviceman and this incident was out of character for him. He had to regain the trust of his wife and children, and he expressed the regret he faces each day when he looks at his wife. He made a single mistake in his unscathed military career and lifetime as a family man, and his life will never be the same. He has to face his new reality, which has been to own up to his terrible mistake and find a new way to support his family. He is trying to transfer his 20-year military career as a medic into the civilian world of pharmacy. Respondent's pharmacy colleagues also wrote strong letters of support indicating he has excellent work skills as a pharmacy clerk; he is trustworthy, professional, and a team player; and if given a chance, he would be an excellent pharmacy technician.

16. Evidence from outside sources, such as the letters from respondent's military and pharmacy colleagues, lends credibility to his testimony of rehabilitation.

“Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living” can be helpful in determining whether a person seeking licensure is rehabilitated. (See, *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.)

17. Respondent’s convictions occurred four years ago. There was no evidence of any subsequent contacts with law enforcement. Courts have found that “the evidentiary significance of . . . 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.)

18. A pharmacy technician is responsible for dispensing dangerous drugs and controlled substances, and is entrusted with financial, personal, and confidential information about clients. The statutes relating to licensing are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Administrative actions regarding a state-issued license are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

19. In this case, the appropriate level of discipline is to issue a pharmacy technician registration to respondent, immediately revoke it, and place it on probation with terms and conditions. In light of the rehabilitation established by respondent, a three-year term of probation will adequately protect the public.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a Pharmacy Technician registration, a Pharmacy Technician registration shall be issued to Van Rowin Ferrer Manlambus and immediately revoked; the order of revocation is stayed and respondent's Pharmacy Technician registration is placed on probation for three years upon the following terms and conditions:

1. 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; and
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license 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.

Failure to timely report such occurrence shall be considered a violation of probation.

2. 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.

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.

3. 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 for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. COOPERATE WITH BOARD STAFF

Respondent shall timely 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, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. REPORTING OF EMPLOYMENT AND NOTICE TO EMPLOYERS

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7186 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 ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

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 (a)

his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7186, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6849, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. 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 an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a Pharmacy Technician, or any position for which a Pharmacy Technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. NOTIFICATION OF CHANGE(S) IN NAME, ADDRESS(ES), OR PHONE NUMBER(S)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

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.

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 Pharmacy Technician 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 practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the 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 pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license 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, including any outstanding costs.

10. CERTIFICATION PRIOR TO RESUMING WORK

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous 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, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be a violation of probation.

11. PRACTICE REQUIREMENT – EXTENSION 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 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a Pharmacy Technician in California for the minimum number of hours in any calendar month for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a Pharmacy Technician in California for the minimum number of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

12. VIOLATION OF PROBATION

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that 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. The board or its designee may post a notice of the extended probation period on its website.

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. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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.

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13. COMPLETION OF PROBATION

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

DATE: October 24, 2022



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings

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9

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

13
14 In the Matter of the Statement of Issues Against: Case No. 7186
15 **VAN ROWIN FERRER MANLAMBUS** **STATEMENT OF ISSUES**
16 **Pharmacy Technician Registration Applicant**
17 Respondent.

18
19 **PARTIES**

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

23 2. On or about November 5, 2020, the Board received an application for a Pharmacy
24 Technician Registration from Van Rowin Ferrer Manlambus (Respondent). On October 30,
25 2020, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
26 and representations in the application. The Board denied the application on July 23, 2021. On or
27 about July 27, 2021, the Board received Respondent's timely request to appeal the denial of his
28 license application.

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 (Code) unless
4 otherwise indicated.

5 4. Code section 4300, subdivision (c), states in part, that the Board may refuse a license
6 to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion, issue a
7 probationary license to any applicant for a license who is guilty of unprofessional conduct and
8 who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Code section 7.5 states, in part:

11 (a) A conviction within the meaning of this code means a judgment following a
12 plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action
13 which a board is permitted to take following the establishment of a conviction may be
14 taken when the time for appeal has elapsed, or the judgment of conviction has been
15 affirmed on appeal or when an order granting probation is made suspending the
16 imposition of sentence. However, a board may not deny a license to an applicant who
17 is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

18 ...

19 (c) Except as provided in subdivision (b) [concerning attorneys regulated by
20 the State Bar of California], this section controls over and supersedes the definition of
21 conviction contained within individual practice acts under this code.

22

23 6. Code section 480 states, in part:

24 (a) Notwithstanding any other provision of this code, a board may deny a
25 license regulated by this code on the grounds that the applicant has been convicted of
26 a crime or has been subject to formal discipline only if either of the following
27 conditions are met:

28 (1) The applicant has been convicted of a crime within the preceding
seven years from the date of application that is substantially related to the
qualifications, functions, or duties of the business or profession for which
the application is made, regardless of whether the applicant was
incarcerated for that crime, or the applicant has been convicted of a crime
that is substantially related to the qualifications, functions, or duties of the
business or profession for which the application is made and for which the
applicant is presently incarcerated or for which the applicant was released
from incarceration within the preceding seven years from the date of
application...

...

1 (b) Notwithstanding any other provision of this code, a person shall not be
2 denied a license on the basis that the person has been convicted of a crime, or on the
3 basis of acts underlying a conviction for a crime, if that person has obtained a
4 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of
5 Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state
6 or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

7 (c) Notwithstanding any other provision of this code, a person shall not be
8 denied a license on the basis of any conviction, or on the basis of the acts underlying
9 the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41,
10 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement.
11 An applicant who has a conviction that has been dismissed pursuant to Section
12 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the
13 dismissal if it is not reflected on the report furnished by the Department of Justice.

14 ...

15 (h) "Conviction" as used in this section shall have the same meaning as defined
16 in Section 7.5.

17 ...

18 (j) This section shall become operative on July 1, 2020.

19 7. Code section 482 states:

20 (a) Each board under this code shall develop criteria to evaluate the
21 rehabilitation of a person when doing either of the following:

22 (1) Considering the denial of a license by the board under Section 480.

23 (2) Considering suspension or revocation of a license under Section 490.

24 (b) Each board shall consider whether an applicant or licensee has made a
25 showing of rehabilitation if either of the following are met:

26 (1) The applicant or licensee has completed the criminal sentence at issue
27 without a violation of parole or probation.

28 (2) The board, applying its criteria for rehabilitation, finds that the
applicant is rehabilitated.

...

(d) This section shall become operative on July 1, 2020.

8. Code section 493 states:

(a) Notwithstanding any other law, in a proceeding conducted by a board
within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact.

1 (b)(1) Criteria for determining whether a crime is substantially related to the
2 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

3 (A) The nature and gravity of the offense.

4 (B) The number of years elapsed since the date of the offense.

5 (C) The nature and duties of the profession.

6 (2) A board shall not categorically bar an applicant based solely on the type
7 of conviction without considering evidence of rehabilitation.

8 (c) As used in this section, “license” includes “certificate,” “permit,”
“authority,” and “registration.”

9 . . .

10 (e) This section shall become operative on July 1, 2020.

11 9. Code section 4301, subdivisions (j) and (l), state:

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

14 . . .

15 (j) The violation of any of the statutes of this state, of any other state, or of the
16 United States regulating controlled substances and dangerous drugs.

17 . . .

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 be conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 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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1 **REGULATORY PROVISIONS**

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

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

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

7 11. California Code of Regulations, title 16, section 1769, subdivision (b), states:

8 (b) Denial of a License

9 (1) When considering the denial of a facility or personal license under Section
10 480 of the Business and Professions Code on the grounds that the applicant has been
11 convicted of a crime, the board will consider whether the applicant made a showing
of rehabilitation if the applicant completed the criminal sentence at issue without a
12 violation of parole or probation. In making this determination, the board will
consider the following criteria:

13 (A) The nature and gravity of the crime(s).

14 (B) The length(s) of the applicable parole or probation period(s).

15 (C) The extent to which the applicable parole or probation period was
shortened or lengthened, and the reason(s) the period was modified.

16 (D) The terms or conditions of parole or probation and the extent to
17 which they bear on the applicant's rehabilitation.

18 (E) The extent to which the terms or conditions of parole or probation
were modified, and the reason(s) for modification.

19 (2) If the applicant has not completed the criminal sentence at issue without a
20 violation of parole or probation, or the board determines that the applicant did not
make the showing of rehabilitation based on the criteria in paragraph (1) or the denial
21 is based on professional misconduct, the board will apply the following criteria in
evaluating an applicant's rehabilitation:

22 (A) The nature and gravity of the act(s), professional misconduct, or
23 crime(s) under consideration as grounds for denial.

24 (B) Evidence of any act(s), professional misconduct, or crime(s)
25 committed subsequent to the act(s), professional misconduct, or crime(s)
under consideration as grounds for denial under Section 480 of the
Business and Professions Code.

26 (C) The time that has elapsed since commission of the act(s), professional
27 misconduct, or crime(s) referred to in subparagraph (A) or (B).

28 (D) Whether the applicant has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the applicant.

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(E) The criteria in paragraphs (1)(A) through (E), as applicable.

(F) Evidence, if any, of rehabilitation submitted by the applicant, including as provided in the board’s Disciplinary Guidelines, identified in section 1760.

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

- (1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.
- (2) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or any law of this state, or any other jurisdiction, relating to controlled substances or dangerous drugs.
- (3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.
- (4) Involve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.
- (5) Involve a conviction for driving under the influence of drugs or alcohol.

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1 **CAUSE FOR DENIAL OF APPLICATION**

2 **(November 29, 2018 Criminal Convictions for Attempted Sexual**
3 **Assault and Attempted Sexual Abuse of a Child in February of 2018)**

4 13. Respondent’s application is subject to denial under Code sections 480, subdivision
5 (a)(1), and 4301, subdivisions (j) and (l), because Respondent was convicted of crimes that are
6 substantially related to the qualifications, duties, and functions of a pharmacy technician. On or
7 about November 29, 2018, in court-martial action *United States v. Vanrowin F. Manlambus*,
8 convened at Joint Base Pearl Harbor-Hickam, Hawaii, Convening Order No. 01-19, Respondent
9 was found guilty of Uniform Code of Military Justice, Article 80, Sections 120BB1 (Attempted
10 Sexual Assault of a Child), and 120BC3 (Attempted Sexual Abuse of a Child). Respondent
11 appealed the guilty findings to the Court of Criminal Appeals for the United States Navy –
12 Marine Corps in appellee *United States v. Varowin F. Manlambus*, Appellant, Appeal no.
13 201900080. The Court of Criminal Appeals affirmed the findings of guilty and the sentence
14 (reduction to the grade of E-6 and Dishonorable Discharge) in its decision that rendered the
15 conviction as final on May 27, 2020.

16 14. The circumstances that led to the convictions are that between on or about February
17 4, 2018, and February 5, 2018, while on duty in or near Okinawa, Japan, Respondent responded
18 to a local on-line personal ad to meet a girl. The ad had been posted by undercover Naval
19 Criminal Investigative Service (NCIS) agents. Despite being told multiple times that she was 15
20 years old, Respondent questioned the “girl” about her sexual experiences and proposed sexual
21 acts that they could engage in together. Respondent made plans to meet with the girl while her
22 mother was at work. The “girl” asked him to bring a treat for her when he went to meet her at her
23 apartment. Respondent went to the complex where the girl supposedly lived. When he was
24 looking for the door to what he was told was the girl’s apartment, NCIS took Respondent into
25 custody and seized his cell phone and the candy he brought with him. Respondent’s recent
26 internet history revealed searches for “how do you know if a minor is trying to bait you” and
27 “pedobating – scam online predators.”

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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 Respondent Van Rowin Ferrer Manlambus for a Pharmacy Technician Registration; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/11/2021

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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