

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

In the Matter of the Statement of Issues
Against:

DAWN T. CONLEY

Pharmacy Technician Registration Applicant,

Respondent.

Case No. 6380

OAH No. 2018080995

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on March 7, 2019.

It is so ORDERED on February 5, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board President

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In the Matter of the Statement of Issues
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PROPOSED DECISION

This matter came on regularly for hearing on December 12, 2018, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Christine J. Lee, Deputy Attorney General.

Dawn T. Conley (Respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On or about June 16, 2017, Respondent submitted an application for a Pharmacy Technician Registration to the Board. The Board denied the application on December 20, 2017. Respondent timely appealed that decision, and this action ensued.
3. On June 20, 2011, in the Superior Court of California, County of Los Angeles, in case number SA077660, Respondent pled nolo contendere and was convicted of violating Penal Code section 530.5, subdivision (a) (identity theft), a felony.

4. Respondent was placed on formal probation for a period of three years under various terms and conditions including incarceration in the Los Angeles County Jail for 30 days with credit for 18 days served, and eight days good time/work time, payment of fines and assessments totaling \$270, payment of restitution as required by her probation officer, a prohibition against owning, possessing, or using dangerous or deadly weapons, and a requirement that she stay at least 100 yards away from the victims of her crime. On October 21, 2016, the court set aside and vacated the nolo contendere plea, entered a plea of not guilty, and dismissed the case pursuant to Penal Code section 1203.4.

5. The facts and circumstances underlying the conviction are that, on March 23, 2011, Respondent attempted to purchase merchandise worth \$2,216.22 from a Best Buy store using counterfeit credit cards and a counterfeit driver's license. The counterfeit credit cards and driver's license bore the name "Jazmin Price."

6. On June 29, 2011, in the Superior Court of California, County of Los Angeles, in case number 1CA10020, Respondent pled nolo contendere and was convicted of violating Penal Code section 647, subdivision (b) (disorderly conduct; prostitution), a misdemeanor.

7. Respondent was ordered to complete a 12-month Prostitution Diversion Program and to stay away from the location of her arrest.

8. The facts and circumstances underlying the conviction are that, on March 9, 2011, Respondent offered to commit a sexual act on an undercover police officer for \$100. When she was arrested, she identified herself as "Jazmin Price."

9. On November 10, 2011, in the Superior Court of California, County of Los Angeles, in case number 7LT01761, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license), a misdemeanor.

10. Respondent was placed on summary probation for a period of three years under various terms and conditions including payment of fines, fees, assessments, and surcharges totaling \$1,235, and a prohibition against driving a motor vehicle unless she was lawfully licensed and insured. Respondent was permitted to perform 10 days of community service in lieu of the \$300 fine.

11. The facts and circumstances underlying the conviction were not disclosed by the evidence.

12. All of Respondent's convictions occurred over a period of five months and were connected to a relationship marked by physical, mental, and emotional abuse. Respondent made numerous unsuccessful attempts to terminate the relationship. She was eventually able to do so, and she has suffered no subsequent convictions.

13. Question 8 on Respondent's registration application read in pertinent part:

Have you ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state, the United States or its territories, a military court, or any foreign country? Include any felony or misdemeanor offense, and any infraction involving drugs or alcohol with a fine of \$500 or more. You must disclose a conviction even if it was: (1) later dismissed or expunged pursuant to Penal Code section 1203.4 et seq., or an equivalent release from penalties and disabilities provision from a non-California jurisdiction, or (2) later dismissed or expunged pursuant to Penal Code section 1210 et seq., or an equivalent post-conviction drug treatment diversion dismissal provision from a non-California jurisdiction. Failure to answer truthfully and completely may result in the denial of your application.

NOTE: You may answer "NO" regarding, and need not disclose, any of the following: (1) criminal matters adjudicated in juvenile court; (2) criminal charge dismissed or expunged pursuant to Penal Code section 1000.4 or an equivalent deferred entry of judgment provision from a non-California jurisdiction; (3) convictions more than two years old on the date you submit your application for violations of California Health and Safety Code section 11357, subdivisions (b), (c), (d), or (e), or California Health and Safety Code section 11360, subdivision (b); and (4) infractions or traffic violations with a fine or less than \$500 that do not involve drugs or alcohol. [¶] . . . [¶]

Failure to disclose a disciplinary action or conviction may result in the license being denied or revoked for falsifying the application. . . .

(Exhibit 2, page AG-038.) (Emphasis in text.)

14. Respondent answered "no" to question 8. She signed the application under penalty of perjury, averring that all statements, answers, and representations were true and correct.

15. Respondent's answer to question 8 was false. At the administrative hearing, she explained that she filled out the application with her advisor from the Los Angeles County Office of Education, and that both of them believed the question asked for convictions that had occurred within the previous three years. She claimed she did not intend to deceive anyone, as evidenced by her attaching her expungement information from her June 20, 2011 conviction. That testimony was unconvincing in three ways. First, it defies both logic and reason that even one person, much less two people, would believe only convictions less than three years old had to be disclosed when there was nothing in the

question or its explanation that mentioned three years, and the question specifically asked whether she had ever been convicted or pled guilty or nolo contendere to any crime. Secondly, if she thought she did not have to disclose a conviction more than three years old, there would be no reason to include with her application a dismissal pursuant to Penal Code section 1203.4 for a six-year-old conviction. Third, although Respondent's license application contained numerous attachments, a dismissal order pursuant to Penal Code section 1203.4 was not among them. (Exhibit 2.)

16. As of February 18, 2015, Respondent had completed 241.5 hours of community service at Liberty High School in Compton, California, where she performed administrative and receptionist duties, entered data, answered telephones, filed, copied, and performed other general office functions. She also completed courses in healthy relationships, domestic violence, parenting, and anger management. Respondent presently works in the Customer Service Department at United Health Care. She seeks a career in health care administration.

17. Respondent was discharged from her most recent probation on March 2, 2015.

18. Respondent is a single parent. She finds support in her 11-year-old daughter, her grandmother, and some other relatives. She is involved in her daughter's school activities.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a Pharmacy Technician License pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3), for conviction of substantially related crimes, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11.

2. Cause exists to deny Respondent's application for a Pharmacy Technician License pursuant to Business and Professions Code section 480, subdivision (a)(2), for acts involving dishonesty, fraud, or deceit, as set forth in Findings 3, 4, and 5.

3. Cause exists to deny Respondent's application for a Pharmacy Technician License pursuant to Business and Professions Code section 480, subdivision (d), for making a false statement on a license application, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14.

4. Cause does not exist to deny Respondent's application for a Pharmacy Technician License pursuant to any provision of Business and Professions Code section 4301. That statute applies only to "any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake." Respondent does not hold a license issued by the Board.

5. Respondent's crimes are substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

6. The Board has established guidelines for assessing rehabilitation in connection with determining whether an applicant should be granted licensure and, if so, under what conditions. California Code of Regulations, title 16, section 1769, subdivision (b) states:

When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

7. Although Respondent's crimes of prostitution and driving with a suspended license are of moderate severity, her crime of identity theft and the act of making a false statement on her registration application are severe in that both acts involved dishonesty and deceit. Respondent's most recent bad act, the falsifying of her registration application, occurred in June 2017. She is not alleged to have committed any acts or crimes that would be grounds for denial of her application since that time. Respondent complied with the terms of her criminal probation, and she was discharged from her most recent probation on March 2, 2015. On October 21, 2016, her June 2011 conviction for identity theft was dismissed pursuant to Penal Code section 1203.4.

8. Respondent suffered all of her convictions over an approximate five-month period during 2011. The crimes underlying those convictions were all connected with an abusive relationship from which she had difficulty extricating herself. The convictions are becoming temporally remote, and Respondent has taken steps toward rehabilitation with respect to them. However, as is more fully described in Factual Finding 15, Respondent's misrepresentation on her registration application is not so easily dismissed. Despite an earlier conviction for a crime of dishonesty and deceit, Respondent failed to disclose any of

her three criminal convictions as required. Her explanation for that failure was not convincing for a variety of reasons. Absent a valid explanation for the exclusions, full rehabilitation cannot be found, and the public health, safety, welfare, and interest cannot be adequately protected if Respondent is granted licensure.

9. The purpose of an administrative proceeding such as this one is not to punish the applicant, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

10. Respondent bore the burden of proving that she is fit to hold a pharmacy technician registration. (*Bley v. Board of Dental Examiners* (1932) 120 Cal.App. 426, 430-431.) She did not sustain that burden.

ORDER

The application of Respondent, Dawn T. Conley, for a Pharmacy Technician Registration, is denied.

Dated: December 27, 2018

DocuSigned by:
h. stuart waxman
N. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 6380

13 **DAWN T. CONLEY**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 16, 2017, the Board received an application for a Pharmacy
23 Technician Registration from Dawn T. Conley (Respondent). On or about June 13, 2017, Dawn
24 T. Conley certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on December 20, 2017.

26 ///

27 ///

28 ///

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 **STATUTORY PROVISIONS**

6 4. Section 480 of the Code states:

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

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

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

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

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

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

1 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
4 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
5 of the dismissal.

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

9 5. Section 490 of the Code states, in pertinent part:

10 “(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

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

24 6. Section 4301 of the Code states, in pertinent part:

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

28

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

4 “(g) Knowingly making or signing any certificate or other document that falsely represents
5 the existence or nonexistence of a state of facts.

6

7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
15 dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24

25 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency. . . .”

1 **REGULATORY PROVISION**

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

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

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Crime)**

11 8. Respondent's application is subject to denial under sections 480(a)(1), 480(a)(3), and
12 4301(l) of the Code in that Respondent was convicted of a crime as follows:

13 a. On or about June 20, 2011, Respondent was convicted of one felony count of
14 violating Penal Code section 530.5(a) [identity theft], in the criminal proceeding entitled *The*
15 *People of the State of California v. Dawn Tanai Conley* (Super. Ct. L.A. County, 2011, No.
16 SA077660). The Court sentenced Respondent to 30 days in jail, placed her on 3 years formal
17 probation with terms and conditions, order her to perform 240 hours of community service, and
18 pay fines and restitution. On or about October 21, 2016, the case was set aside and dismissed
19 pursuant to Penal Code section 1203.4.

20 b. The circumstances underlying the conviction are that on or about March 23,
21 2011, Culver City Police Department officers responded to call involving the Respondent who
22 attempted to purchase merchandise at a Best Buy Store using counterfeit credit cards. The value
23 of the merchandise was \$2,216.22. Subsequently, officers recovered four counterfeit credit cards
24 and a counterfeit California driver's license in the name of "Jazmin Price."

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

27 9. Respondent's application is subject to denial under section 480(a)(2) and 4301(f) of
28 the Code in that on or about March 23, 2011, Respondent committed an act involving dishonesty,

1 fraud, or deceit with the intent to substantially benefit herself. Complainant refers to and by this
2 reference incorporates the allegations set forth above in paragraph 8, inclusive as though set forth
3 fully.

4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 **(Conviction of a Crime)**

6 10. Respondent's application is subject to denial under sections 480(a)(1), 480(a)(3), and
7 4301(*I*) of the Code in that Respondent was convicted of a crime as follows:

8 a. On or about June 29, 2011, Respondent was convicted of one misdemeanor
9 count of violating Penal Code section 647(b) [disorderly conduct: prostitution], in the criminal
10 proceeding entitled *The People of the State of California v. Dawn Conley* (Super. Ct. L.A.
11 County, 2011, No. 1CA10020). The Court placed the Respondent on a diversion program for 12
12 months with certain terms and conditions. Subsequently, Respondent failed to comply with the
13 diversion program and was sentenced to 15 days in jail and was placed on 24 months of summary
14 probation, with terms and conditions.

15 b. The circumstances underlying the conviction are that on or about March 9,
16 2011, a Los Angeles Police Department undercover officer observed the Respondent standing on
17 a street corner monitoring traffic for lone male motorists. The undercover officer approached the
18 Respondent and engaged in conversation. The Respondent agreed to perform a sexual act on the
19 undercover officer for \$100. Respondent identified herself to officers as "Jazmin Price."

20 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Conviction of a Crime)**

22 11. Respondent's application is subject to denial under sections 480(a)(1), 480(a)(3), and
23 4301(*I*) of the Code in that Respondent was convicted of a crime as follows:

24 a. On or about November 10, 2011, Respondent was convicted of one
25 misdemeanor count of violating Vehicle Code section 14601.1(a) [driving with a suspended
26 license], in the criminal proceeding entitled *The People of the State of California v. Dawn*
27 *Tanaivinita Conley* (Super. Ct. L.A. County, 2011, No. 7LT01761). The Court or Respondent to
28 3 years summary probation, with terms and conditions, and ordered her to pay fines and

1 restitution. Subsequently, on or about March 13, 2015, Respondent failed to comply with
2 probation terms and was remanded for 10 days in the county jail.

3 b. The circumstances underlying the conviction are that on or about February 5,
4 2007, Respondent drove a vehicle while her driver's license was suspended.

5 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Misrepresentation in License Application)**

7 12. Respondent's application is subject to denial under sections 480(d) and 4301(g) of the
8 Code in that on or about June 13, 2017, Respondent knowingly made a false statement of fact
9 required to be revealed in her application for licensure by certifying under penalty of perjury to
10 accuracy of all statements in the application and answering, "No" to question No. 8, "Have you
11 ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state,
12 the United States or its territories, a military court, or any foreign country?"

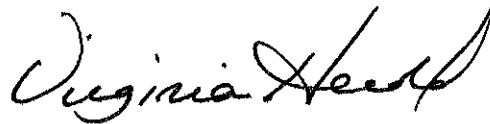
13 **PRAYER**

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

- 16 1. Denying the application of Dawn T. Conley for a Pharmacy Technician Registration;
17 and,
18 2. Taking such other and further action as deemed necessary and proper.

19
20 DATED: _____

4/16/18



21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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