

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

In the Matter of the Statement of Issues
Against:

KRYSTLE DAWNN YOKOM-VELAZQUEZ,

Pharmacy Technician Registration Applicant

Respondent.

Case No. 6411

OAH No. 2018110514

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on May 17, 2019.

It is so ORDERED on April 17, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board President

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PROPOSED DECISION

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, in Sacramento, California, on December 12, 2018.

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

Krystle Dawnn Yokom-Velazquez (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on December 12, 2018.

FACTUAL FINDINGS

1. On October 2, 2017, the Board received an application for registration as a Pharmacy Technician from respondent. On March 1, 2018, the Board denied respondent's application based on her criminal history. Respondent timely appealed the Board's denial.

2. On July 9, 2018, complainant filed the Statement of Issues in her official capacity. In the Statement of Issues, complainant alleges that respondent's application should be denied based upon respondent's criminal convictions and conduct, as described below.

Respondent's Convictions and Conduct

3. On December 17, 2008, in Butte County Superior Court, case number CM030147, respondent was convicted, upon her plea of nolo contendere, of violating Penal Code sections 484e, subdivision (a) (theft of an access card), and 459 (burglary), both misdemeanors. As a result of these convictions, the court placed respondent on summary probation for 36 months, ordered her to serve 30 days in jail, and pay related fines and fees. Respondent complied with each of the terms of her probation. On April 14, 2016, respondent's convictions were dismissed at her request pursuant to Penal Code section 1203.4.

4. The circumstances surrounding respondent's convictions occurred between December 11 and 12, 2008. Respondent's boyfriend worked as a bus boy at a restaurant. On December 11, 2008, he removed a wallet from a table that had been left by a customer. After work, he took the wallet home and shared it with respondent. The wallet contained multiple credit cards and approximately \$150 in cash. On that same day, respondent and her boyfriend used a credit card from the wallet to purchase gasoline for their vehicle. Respondent and her boyfriend then went into a Walmart store and attempted to use one of the credit cards from the wallet to purchase an iPod and headphones. However, the transaction was declined. Respondent and her boyfriend then drove to a Target department store to attempt to purchase items with one of the stolen credit cards, however, by the time they arrived the store had closed. On the following day, respondent returned to Target and used the cash from the wallet to purchase clothing for herself and Christmas presents for her son.

5. A Chico Police Department police officer obtained video surveillance footage of respondent and her boyfriend attempting to purchase items at Walmart. The officer showed the video to the manager of the restaurant where the victim left her wallet. The manager identified respondent's boyfriend as a restaurant employee who had worked at the restaurant the night the victim's wallet was taken. The officer contacted respondent's boyfriend, who admitted he committed the crime and reported to the police station the following day with respondent.

Respondent's Written Statement

6. As part of the application process, respondent submitted a written statement to the Board, dated November 29, 2017, describing the circumstances that resulted in her convictions. This letter includes the following description:

These events took place during a very dark time in my young life. . . . I had no money, no job, and no place to live. During this time, I had found a wallet and in complete desperation I kept it. I took one of the credit cards to Walmart to buy my son diapers, formula, and food. The next day I felt so much guilt I turned myself into [*sic*] the police.

Respondent's Testimony

7. Respondent testified that when she engaged in the acts that led to her convictions, she was going through several personal challenges. She was only 19 years old, had a two-year-old son, was not working, and had been recently kicked out of her parent's home. She testified that she planned to sell the electronic items she attempted to purchase at Walmart to buy formula and diapers for her child. She also testified that the items she purchased at Target, were "Christmas presents for her son, diapers, baby food, and snacks." Respondent stated that she was "super scared" and felt "super guilty" when she engaged in these acts, and felt so guilty that she drove far away from where they lived and threw the wallet out of the car window.

8. Respondent explained that she told the Board she found the wallet in her November 2017 letter, because she was "trying to take the blame" and "thought it would be better if [she] took responsibility for" the crimes rather than disclose that her boyfriend stole the wallet. Respondent also testified that she told the Board she had attempted to purchase diapers, formula, and food with the stolen credit card, rather than the electronic items she actually attempted to purchase, because she "was just stating what she was trying to do" but in hindsight, should have made it more clear that she tried to purchase the electronic items so she could sell them to obtain money to purchase diapers, formula, and food for her son. Respondent could not explain why she did not attempt to purchase diapers, formula, and food with the credit card directly, if her goal was to secure those items for her child's use.

9. Respondent admitted that her written statement that she turned herself in to the police due to guilt was untrue and misleading, as she reported to the police department only after the investigating officer had contacted her boyfriend and her boyfriend admitted to the crime and stated he wanted to turn himself in to the police. Respondent then testified that she could not recall what motivated her to turn herself in to the police, because she has "mentally blocked it all out."

10. Respondent testified that she is a different person than she was when she committed her crimes. She is no longer a "scared teenage girl with a baby [and no] high school diploma." She has returned to school and obtained her high school diploma through Nevada Union Adult Education in 2016. Her son is now 12 years old. She has married the boyfriend who assisted her in her crimes, and they have purchased a home. Respondent added that she has a much better support system than she did when she engaged in her criminal acts. She is much closer with her mother than she was before, her out-of-state grandmother is supportive, her husband has a better job, and she has "become a part of her community."

11. According to respondent, prior to applying for pharmacy technician school, she contacted a representative of the Board to determine whether her criminal history would be an impediment to her desire to become a pharmacy technician. The representative told respondent that her criminal history "would [likely] not be an issue as long as [respondent] was open and honest about everything." Respondent completed her pharmacy technician

coursework through the Learning Oasis, a career resource and education provider, formerly located in Napa. From July 2017 through October 2017, respondent worked as an intern for Pleasant Valley Pharmacy, in Penn Valley, California, and currently works there as a front end clerk. According to respondent, the owners of the pharmacy are willing to hire her as a pharmacy technician, if her application is approved.

Respondent's Supportive Documents

12. Respondent submitted five written character references for consideration from friends, family, colleagues, and one of her instructors. These letters reflect that respondent has been a "superior" student, a "mature, responsible employee . . . with excellent customer service skills," who is also a "go to person" with impressive "work ethic [and] honesty." These letters also reflect that respondent is admired by her friends and family. Only three of the letters indicate that the authors knew of respondent's "mistakes" when the letters were written. These letters were admitted into evidence as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).¹

Discussion

13. Government Code section 11504 provides that a "statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing." Thus, the burden was on respondent to establish her fitness for registration as a pharmacy technician.

14. When reviewing whether to deny a license, the Board considers 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; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) evidence, if any, of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769.)²

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"

² Business and Professions Code section 477, subdivision (b), states, "License" includes certificate, registration or other means to engage in a business or profession regulated by this code." Business and Professions Code section 4032 states, "License" means and includes any license, permit, registration, certificate, or exemption issued by the board and includes the process of applying for and renewing the same."

15. Respondent's convictions and criminal acts were significant. On multiple occasions on December 11 and 12, 2008, she made, or attempted to make, purchases for her own use using stolen credit cards or stolen cash. Respondent's convictions and acts are substantially related to the qualifications, duties and functions of a Board licensee. It has been over 10 years since respondent's convictions. She complied with the terms of her probation and has had her convictions expunged.

16. Respondent testified that she has changed since her convictions, and provided letters from friends, family, and colleagues to support this assertion. However, several statements made by respondent since her convictions, including her testimony at hearing, were troubling, as they were inconsistent and at times implausible.

17. In her November 29, 2017 written statement to the Board, she claimed she "found" the wallet containing the cash and credit cards she used, when she knew her boyfriend had removed the wallet from a dining table at work after a customer left it. This written statement specifies that respondent tried to use the stolen credit cards to buy "diapers, formula, and food," for her young son, when instead she had purchased gasoline, and attempted to purchase an iPod and earphones. The statement also specifies that respondent "turned [herself in to] the police," due to the guilt she felt. However, based on police reports admitted at hearing, respondent reported to the police station only after the police identified her boyfriend as one of the perpetrators of the crimes and only after her boyfriend confessed told the police that he wanted to turn himself in.

18. At hearing, respondent claimed she could not recall the circumstances that caused her to report to the police department on December 12, 2008. She acknowledged her claim that she found the wallet was untrue and misleading, but insisted her goal was to protect her boyfriend, rather than minimize her conduct. She testified that her statement to the Board, that she attempted to purchase diapers, food, and formula with the stolen credit card, when she actually attempted to purchase an iPod and headphones, was due to her failure to be clear about her intentions to later sell the electronics for cash so she could buy diapers, food and formula, but could not explain why she did not simply attempt to purchase those items initially from the store. The inconsistencies between respondent's testimony, written statement, and the actual events surrounding her criminal acts reflect that she has not accepted responsibility for her actions, and therefore, is not rehabilitated. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [a person's] actions is an essential step towards rehabilitation"].)

19. The protection of the public is the Board's highest priority and the paramount concern when exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 4001.1.) Since respondent's convictions and conduct are substantially related to the qualifications, functions, and duties of a licensee, respondent bore the burden of demonstrating that she can be relied upon to obey all laws and regulations, and to act in a manner that is upright, honest, and consistent with professional standards of conduct. Respondent's convictions and criminal conduct are over 10 years old. She has demonstrated

that she has engaged in some rehabilitation, and is commended for her efforts. However, respondent was dishonest with the Board in her November 2017 written statement. Her testimony at hearing was evasive and unconvincing. When all the evidence is considered, respondent failed to submit sufficient evidence to meet her burden of proof. Consequently, respondent's application must be denied.

LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) The term "burden of proof" means "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.)

2. Business and Professions Code section 480, in relevant part, provides:

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

(1) Been convicted of a crime. . . .

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

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

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

3. Business and Professions Code section 4301, in relevant part, provides that the Board "shall take action against the holder of a license who is guilty of unprofessional conduct." Subdivision (f) of that section specifies that unprofessional conduct includes committing "any act involving moral turpitude, dishonesty, fraud, deceit, or corruption." Subdivision (I) of that section specifies that "unprofessional conduct" includes a "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee."

4. Under California Code of Regulations, title 16, section 1770, a crime or act is considered to be substantially related to the qualifications, functions or duties of a Board licensee “if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

5. Respondent’s convictions for theft of an access card and burglary, to a substantial degree evidences the present or potential unfitness of respondent to perform the functions authorized by the license she seeks in a manner consistent with the public health, safety, and welfare. Respondent’s convictions are therefore substantially related to the qualifications, functions, and duties of the business or profession for which the application was made pursuant to California Code of Regulations, title 16, section 1770, and constitute cause to deny respondent’s application pursuant to Business and Professions Code section 4301, subdivision (d), by and through Business and Professions Code section 480, subdivisions (a)(1) and (a)(3).

6. Business and Professions Code section 4301, subdivision (f), defines “unprofessional conduct” to include the “commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.”

7. Respondent’s convictions for theft of an access card and burglary and the acts that led to those convictions establish that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. Consequently, respondent’s application is subject to denial under Business and Professions Code section 4301, subdivision (f), by and through Business and Professions Code section 480, subdivisions (a)(2) and (a)(3).

8. As set forth in Findings 13 through 19, respondent failed to submit sufficient evidence at the hearing to establish that it would be consistent with the public health, safety and welfare to issue respondent the license she seeks. Consequently, respondent’s application must be denied.

ORDER

The application for registration as a Pharmacy Technician submitted by respondent Krystle Dawnn Yokom-Velazquez is DENIED.

DATED: January 10, 2019

DocuSigned by:
Ed Washington
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ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings

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10 **BEFORE THE BOARD OF PHARMACY**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
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13 In the Matter of the Statement of Issues
Against:

Case No. 6411

14 **KRYSTLE DAWN YOKOM-**
15 **VELAZQUEZ**

STATEMENT OF ISSUES

16 **Pharmacy Technician Registration**
17 **Applicant**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia K. Herold ("Complainant") brings this Statement of Issues solely in her
23 official capacity as the Executive Officer of the California State Board of Pharmacy ("Board").
24 2. On or about October 2, 2017, the Board received an application for registration as a
25 Pharmacy Technician from Krystle Dawnn Yokom-Velazquez ("Respondent"). On or about
26 September 27, 2017, Respondent certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Board denied the application on
28 March 1, 2018.

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

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

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

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

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

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

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

28 5. Code section 4300(c) states, in pertinent part:

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

6. Code section 4301 states, in pertinent part:

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

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

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

14 7. California Code of Regulations, Title 16, section 1770 ("CCR section 1770") states,
15 in pertinent part:

16 For the purpose of denial, suspension,

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

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 (Conviction of Crimes)

24 8. Respondent's application is subject to denial under Code sections 480(a)(1),
25 480(a)(3)(A), 4300(c) and 4301(l) in that on or about December 17, 2008, in the criminal
26 proceeding *People v. Krystle Yokom*, Butte County Superior Court Case Number CM030147,
27 Respondent was convicted (upon her pleas of nolo contendere) of violations of Penal Code
28

1 section 484e(a) - theft of access card(s) or account information, and Penal Code section 459 -
2 burglary.

3 9. The circumstances of the convictions are as follows: On or about December 11, 2008,
4 Respondent knowingly received and intentionally used a stolen bank access card to unlawfully
5 and fraudulently attempt to make, and in fact did make, consumer goods purchases for her own
6 personal use and/or interests. On or about December 12, 2008, Respondent knowingly received
7 and intentionally used stolen cash to unlawfully and fraudulently make consumer goods
8 purchases for her own personal use and/or interests. On or about January 29, 2009, Respondent
9 was sentenced to 36 months probation, including 30 days in jail, in addition to fines/fees in the
10 amount of \$770.00. On or about April 14, 2016, Respondent's motion in the Butte County
11 Superior Court to set aside and dismiss the convictions pursuant to Penal Code section 1203.4
12 was granted.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Dishonesty, Fraud or Deceit)**

15 10. Complainant hereby incorporates by reference the statements and allegations at
16 paragraphs 1-9, above, as though fully set forth herein.

17 11. Respondent's application is subject to denial under Code sections 480(a)(2),
18 480(a)(3)(A), 4300(c), 4301(f) and CCR section 1770, in that she committed acts involving
19 dishonesty, fraud, or deceit with the intent to substantially benefit herself or another, as set forth
20 in paragraph 9, above. Respondent's conduct is substantially related to the qualifications,
21 functions and duties of a pharmacy technician.

22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

23 **(Unprofessional Conduct)**

24 12. Complainant hereby incorporates by reference the statements and allegations at
25 paragraphs 1-11, above, as though fully set forth herein.

26 13. Respondent's application is subject to denial under Code sections 480 (a)(3)(A),
27 4300(c), 4301, and CCR section 1770, in that she committed acts constituting unprofessional
28 conduct, as set forth in paragraph 9, above.

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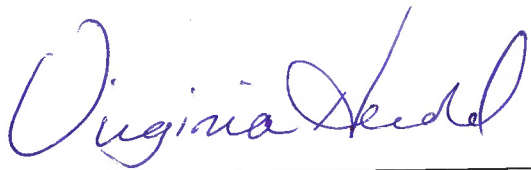
14. Respondent's conduct is substantially related to the qualifications, functions and duties of a pharmacy technician.

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 Krystle Dawnn Yokom-Velazquez to be registered as a Pharmacy Technician;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 7/9/18



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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