

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

In the Matter of the Statement of Issues
Against:

JONATHAN LEE,

Respondent.

Case No. 6678

OAH No. 2019080801

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 February 12, 2020.

It is so ORDERED on January 13, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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

In the Matter of the Statement of Issues against:

JONATHAN LEE, Respondent

OAH No. 2019080801

Agency Case No. 6678

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 24, 2019, in Sacramento, California.

Kevin W. Bell, Deputy Attorney General, represented Anne Sodergren, Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (complainant).

Jonathan Lee (respondent) appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 24, 2019.

SUMMARY

Complainant seeks to deny respondent's application based on respondent's false statements or representations made to law enforcement and the Board about his 2014 criminal conviction. Complainant proved, by a preponderance of the evidence, that respondent was dishonest to law enforcement and the Board about his 2014 conviction, and respondent failed to show sufficient rehabilitation to justify issuing him a license at this time.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 22, 2018, the Board of Pharmacy (Board) received an application for licensure as an Intern Pharmacist (application) from respondent. Respondent certified, under the penalty of perjury, that the facts contained within his application, including all supplementary statements, were true and correct.
2. On February 22, 2019, the Board denied respondent's application. On March 1, 2019, the Board received respondent's request to appeal the denial.
3. On August 2, 2019, complainant signed and thereafter filed the Statement of Issues in her official capacity. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Conduct at Issue

4. Respondent is 25 years old. He has finished his first year of pharmacy school, but cannot continue with his schooling without an intern pharmacist license; hence, his application to the Board.

5. In his application, respondent listed a 2014 misdemeanor conviction for violating Penal Code section 647, subdivision (j)(3) – disorderly conduct. As a teenager, respondent worked at his parent’s Hawaiian barbecue restaurant. On December 15, 2013, respondent was working when a mother and her two-year-old daughter were the only two customers in the restaurant. Respondent took a bathroom break. While he was inside the bathroom, he heard someone trying to open the door. Respondent placed his cell phone on the floor in the corner of the bathroom, partially covered it with toilet paper to hide it, and set it to record the toilet area. Respondent then exited the bathroom and told the mother that the bathroom was no longer occupied.

6. The mother and her daughter used the bathroom. While doing so, they noticed the cell phone and discovered it was recording. They immediately took the cell phone to the Monrovia police department and filed a report. Police officers took the report, then went to the restaurant, where they interviewed respondent. At first, respondent told the officers he recorded the bathroom to catch customers wasting paper supplies or vandalizing it. After being questioned for approximately 20 minutes, respondent admitted to the police officers that he “wanted to take a video of the little girl peeing.”

7. On May 9, 2014, in the Superior Court of California, County of Los Angeles, case no. 4PS20266, respondent was convicted, on his plea of no contest, of violating Penal Code section 647, subdivision (j)(3) (disorderly conduct by use of a

concealed camera to secretly record a person who may be in the state of full or partial undress for the purpose of viewing the body of that person without their consent with the intent to invade the privacy of that person), a misdemeanor. Respondent was sentenced to 36 months of informal probation, and ordered to perform 20 hours of community service, to attend 13 sexual compulsive anonymous meetings, and to pay fines, fees, and restitution. Respondent completed all terms of sentencing, and on May 24, 2017, on respondent's motion, the court ordered the guilty plea withdrawn, set the conviction aside, and dismissed the charges against respondent pursuant to Penal Code section 1203.4.

8. At hearing, respondent denied trying to record the little girl urinating. Instead, he said he was trying to catch customers wasting paper supplies. He explained that he lied to the police officer about his motivation so the interview would end. He has attended the 13 court-ordered hour-long sexual compulsive anonymous meetings. He does not consider himself a "sexual compulsive," but he recognizes it is a problem that exists "for other people." He said he was not motivated to record the customers using the bathroom out of sexual desire.

Respondent's Statements in his Application

9. On August 22, 2018, respondent signed his application; the Board received it on October 22, 2018. In it, respondent answered "Yes" to Question 13, which asked:

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?

Respondent also listed his conviction date, case number, and wrote "647(J)(3)" as his violation.

10. The application further instructs:

You must provide a written explanation for all affirmative answers. Failure to provide any of the requested information may result in the application being deemed incomplete. Falsification of the information on this application may constitute grounds for denial or revocation of the license.

11. At the Board's request, on October 15, 2018, respondent signed and subsequently submitted a letter explaining his conviction. In his letter, respondent explained that he "tried setting up [his] phone in the restroom to record anyone trying to vandalize" the bathroom. He further explained that the police "told [him] that it would be written down as disorderly conduct and [he] would have a restraining order put against [him] by the opposite party." His letter does not mention his statement to the Monrovia police that he "wanted to take a video of the little girl peeing."

Duties of an Intern Pharmacist

12. Steven Kyle, an Inspector for the Board, testified that as part of his duties, he conducts investigations and performs inspections. Inspector Kyle is familiar with the duties of an intern pharmacist. He explained that, with supervision, intern pharmacists are authorized to perform any function of a pharmacist. Duties include: counting, pouring, and mixing pharmaceuticals, as well as performing primary care functions for patients. Inspector Kyle noted that intern pharmacists not only have access to sensitive patient information, but can also examine patients behind closed doors.

Discussion

13. Complainant alleges respondent's application is subject to denial for making false statements of fact required to be revealed in his application, and for lying to the police about his reason for leaving his cellphone recording in the bathroom. First, respondent was convicted, on a plea of no contest, of violating Penal Code section 647, subdivision (j)(3). That section provides, in relevant part, that a person is guilty of disorderly conduct if he:

Uses a concealed [. . .] photographic camera of any type, to secretly [. . .] record by electronic means, another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a [. . .] bathroom [. . .] in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

However, respondent told the Board he "tried setting up [his] phone in the restroom to record anyone trying to vandalize" the bathroom.

14. Second, at hearing, respondent admitted telling the police he "wanted to take a video of the little girl peeing." Respondent confessed lying to the officer so the interview would end. He insisted that he only used the camera to try to catch vandals. Ultimately, respondent's testimony was unpersuasive: he left his phone to record the toilet area of the bathroom, he pled to violating Penal Code section 647, subdivision (j)(3), and he made a statement to the police about his true motivation.

15. Moreover, respondent cannot impeach his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged".]) This is true "irrespective of a subsequent order under Section 1203.4 of the Penal Code." (Bus. & Prof. Code, § 490, subd. (c).) Furthermore, respondent's conviction included an admission as to his motivation. Specifically, Penal Code section 647, subdivision (j)(3) includes the phrases "for the purpose of viewing the body of, or the undergarments worn by, that other person" and "with the intent to invade the privacy of that other person." Therefore, respondent's statements of a different motivation are false. Because respondent repeated that false representation in his statement to the Board, his application is subject to denial.

16. The Board should only deny a professional license after considering the applicant's conduct and any evidence of justification, mitigation, aggravation and rehabilitation. (*Arneson v. Fox* (1980), *supra*, 28 Cal.3d at 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) When evaluating rehabilitation, the Board considers the nature and severity of the acts, any acts committed afterwards, the time that has passed since commission of the acts, and any other evidence of the applicant's rehabilitation. (Cal. Code Regs., tit. 16, § 1769, subd (b).)

17. Here, respondent misrepresented his criminal conduct to the Board. Respondent also lacked insight about his deceit. At hearing, he continued to deny any wrongdoing. Instead, he continued to lie, repeating his unpersuasive claims of attempting to stop vandalism.

18. Public protection is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions, and it is paramount to all other interests. (Bus. &

Prof. Code, § 4001.1.) To protect the public, the Board expects its licensees to act with good judgment, responsibility, integrity, and honesty. When the rehabilitation factors are considered as a whole, respondent has not established that he has engaged in sufficient rehabilitation to meet those expectations. First, respondent must acknowledge and accept his wrongdoing. Without doing so, he cannot make adequate changes to his life to show rehabilitation. As the California Supreme Court has noted, “[f]ully acknowledging the wrongfulness of [one’s] actions is an essential step towards rehabilitation.” (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent’s lack of insight into his misrepresentations to the Board, and his repetition of those misrepresentations, demonstrate that it would be inconsistent with the public health, safety and welfare to grant him an intern pharmacist license at this time. Respondent’s application should therefore be denied.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden of proving that he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. A license application may be denied when the applicant has knowingly made a false statement of fact that is required to be revealed in the application for the license, or has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. (Bus. & Prof. Code, § 480,

subds. (a)(2) & (d)¹.) A license application may also be denied when the applicant has done any act that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made that, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subds. (a)(3)(A) & (B).)

3. Pursuant to Business and Professions Code section 4300, subdivision (c), which applies to license applicants under Business and Professions Code section 480, subdivision (a)(3)(A), a license application may be denied when the applicant is guilty of unprofessional conduct. Unprofessional conduct includes "[t]he 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." (Bus. & Prof. Code, § 4301, subd. (f).) Unprofessional conduct also includes "[a]ctions or conduct that would have warranted denial of a license." (Bus. & Prof. Code, § 4301, subd. (p).)

4. Respondent's repeated misrepresentations about his conduct demonstrate unprofessional conduct insofar as they are acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, and would warrant denial of the license. Respondent's misrepresentations therefore establish cause to deny his application under Business and Professions Code sections 480, subdivisions (a)(2), (a)(3)(A), (a)(3)(B), and (d), and 4301, subdivisions (f) and (p).

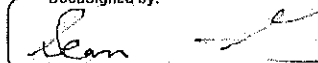
¹ The reference to Business and Professions Code section 480, subdivision (e), in paragraph 12 of the Statement of Issues, appears to be a typographical error. The correct subdivision is (d).

5. As articulated in Factual Findings 16 through 18, respondent did not establish that he has been sufficiently rehabilitated. Therefore, it would be inconsistent with the public health, safety, and welfare to issue him an intern pharmacist license at this time.

ORDER

The intern pharmacist application submitted by respondent Jonathan Lee is DENIED.

DATE: October 23, 2019

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SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

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

10
11 In the Matter of the Statement of Issues
Against:

Case No. 6678

12 **JONATHAN LEE**

STATEMENT OF ISSUES

13 **Intern Pharmacist License Applicant**

14 Respondent.
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17 **PARTIES**

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

21 2. On or about October 22, 2018, the Board received an application for licensure as an
22 Intern Pharmacist from Jonathan Lee (“Respondent”). On or about August 22, 2018, Jonathan
23 Lee certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application.

25 **JURISDICTION**

26 3. Pursuant to Business and Professions Code (“Code”) 485, subdivision (b), on or about
27 February 22, 2019, Respondent’s application was denied and he was notified of the right to a
28 hearing to appeal the denial.

1 (“victim 2”) and her two (2) year old daughter (“victim 1”) trying to enter the restroom.
2 Respondent placed his camera phone in the corner of the bathroom floor with the camera facing
3 the toilet knowing victim 1 and 2 were in need of using the restroom. Upon exiting the restroom,
4 Respondent approached victim 1 and 2 to inform victim 2 that the bathroom was available.
5 Victim 2 noticed the camera phone near the toilet and brought it to her mother’s attention.
6 Victim 2 noticed the phone’s suspicious location and the fact that it was recording. Victim 2 left
7 the restaurant and took the phone to Monrovia Police Department (“MPD”) to report the
8 recording. Officers went to the restaurant to speak with Respondent, who provided a statement.
9 Respondent initially told the officer that he placed his cell phone in the bathroom because there
10 was an over usage of toilet cover slips and toilet paper, but later admitted that he “wanted to take
11 video of the little girl peeing.” Respondent’s father, who also worked at the restaurant, confirmed
12 there was no over usage.

13 9. On or about February 11, 2014, in the case of The People of the State of California v.
14 Jonathan Kun Lee, Los Angeles County Superior Court case no. 4PS20266, the Respondent was
15 charged with a violation of Penal Code section 647(j)(3), Use of a Concealed Camera to Secretly
16 Record a Person who may be in a State of Full or Partial Undress for the Purpose of Viewing the
17 Body of that Person Without Their Consent With the Intent to Invade the Privacy of that Person.

18 10. On or about May 9, 2014, Respondent was convicted by his plea of No Contest of a
19 misdemeanor violation of Penal Code section 647(j)(3). The Respondent was placed on 3 years
20 probation, and ordered to stay away from the 2-year-old victim and her mother, and to attend 13
21 sexual compulsive anonymous meetings.

22 11. On or about August 22, 2018, Respondent submitted his application for licensure as
23 an Intern Pharmacist with a written explanation regarding the conviction he disclosed. In the
24 written explanation, Respondent alleged that customers had been vandalizing the restroom,
25 throwing toilet paper/paper towels everywhere and that he decided to take matters in his own
26 hands by setting up the camera phone in the restroom, contradicting not only the evidence, but
27 Respondent’s own statements and admission recorded in the arrest report. Further, Respondent
28 falsely stated in his written explanation that he was charged with disorderly conduct.

1 **FIRST CAUSE FOR DENIAL**

2 **(False Statement of Fact Made in Application for Licensure)**

3 12. Respondent's application is subject to denial under Code section 480, subdivision (e),
4 in that Respondent made false statements of facts required to be revealed in the application for the
5 license, as more particularly set forth above in paragraph 9.

6 **SECOND CAUSE FOR DENIAL**

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

8 13. Respondent's application is subject to denial under Code section 480,
9 subdivision (a)(2), in that on or about August 22, 2018, Respondent committed dishonest acts,
10 fraud, or deceit with the intent to substantially benefit himself, or substantially injure another, as
11 follows:

12 a. Respondent lied in his statement to Monrovia Police Department as to the
13 reason he placed the camera phone in the bathroom, as more particularly set forth above in
14 paragraph 8.

15 b. Respondent's explanation of the incident disclosed in his explanatory letter to
16 the Board was contradictory to Respondent's admissions in his statement in his arrest report, as
17 more particularly set forth above in paragraphs 8 and 11.

18 **THIRD CAUSE FOR DENIAL**

19 **(Committed Acts Which If Done by a Licentiate)**

20 14. Respondent's application is subject to denial under Code section 480,
21 subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
22 licentiate of the business and profession in question would be grounds for discipline, as follows:

23 a. Respondent committed acts involving moral turpitude, dishonesty, fraud,
24 deceit, or corruption, in violation of Code section 4301, subdivision (f), as more particularly set
25 forth above in paragraph 13, subparagraphs (a) and (b).

26 b. Respondent committed acts, which would be grounds for denial of an
27 application for a license, in violation of Code section 4301, subdivision (p), as more particularly,
28 set forth above in paragraph 13, subparagraphs (a) and (b).

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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 issue a decision:

1. Denying the application of Jonathan Lee for a Intern Pharmacist; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: August 2, 2019



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

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