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

In the Matter of the Accusation Against: ASHKAN KHABAZIAN 10973 Waterton Road San Diego, CA 92131 Pharmacist License No. RPH 55204 Respondent.	Case No. 3456 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 7, 2003, the Board of Pharmacy issued Pharmacist License Number RPH 55204 to Ashkan Khabazian (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

> Notwithstanding any other provision of 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,

and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Section 4301 of the Code states:

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:

. . . .

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . . .

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

. . . .

(l) The conviction of a crime substantially related to the qualifications, functions, 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 regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled 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.

11. Health and Safety Code section 11375(b)(2) provides that every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

REGULATORY PROVISIONS

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant 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.

13. California Code of Regulations, title 16, section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

15. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(November 13, 2008 Conviction for DUI on June 9, 2007)

16. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Code in that he was convicted of crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On or about February 28, 2008, in a criminal proceeding entitled *People of the State of California v. Ashkan Khabazian,* in San Diego County Superior Court, case number M042101, Respondent was charged with violation of Vehicle Code section 23152(a), driving under the influence of alcohol, violation of Vehicle Code section 23152(b), driving while having a measurable blood alcohol level of .08% or more, and violation of Health and Safety Code section 11375(b)(2), possession without a prescription of a controlled substance.

b. On or about November 13, 2008, Respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152(a), driving under the influence of alcohol. As a result of the plea agreement, the remaining counts were dismissed. As a result of the conviction, on or about November 13, 2008, Respondent was sentenced to five years summary probation, ordered to pay a total fine of $2,062, and ordered to enroll and complete a first conviction program and a MADD program.

c. The facts that led to the conviction were that on or about June 9, 2007, an officer of the San Diego Police Department observed a white Mercedes leave a parking stall and circle around in a dark parking lot without the headlights on. After witnessing the vehicle pass the parking lot exit a few times, the officer initiated a traffic stop. The driver of the vehicle identified himself as Respondent. As he spoke with Respondent, the officer observed symptoms of intoxication. Another San Diego Police Department officer arrived at the scene and noticed that Respondent was talking as if his tongue was swollen or thick, and his eyes lacked a smooth pursuit.

d. After one of the officers instructed Respondent to perform a field sobriety test, Respondent attempted the test and then stated that he did not want to continue with the test, the officer placed Respondent under arrest. Respondent was searched and the officer found two half pills in Respondent's pant's pocket. One of the pills was white and half round and the other was orange and oblong. When questioned by the officer, Respondent stated that he did not know what they were. The officer believed the pills that he found in Respondent's pocket were Lorazepam and Adderall. Subsequent lab results confirmed that one of the pills was Lorazepam.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)

17. Respondent is subject to disciplinary action under section 4301(h) of the Code in that on or about June 9, 2007, Respondent used alcohol to an extent or in a manner which was

dangerous to himself or others, as is set forth above in paragraph 16, above, which is incorporated herein by reference as though fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating State Laws Regulating Controlled Substances)

18. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code in that on or about June 9, 2007, Respondent unlawfully possessed a controlled substance, Lorazepam, in violation of Code section 4060 and/or the California Uniform Controlled Substances Act (Health and Safety Code 11375(b)(2)), as detailed in paragraph 16, above, which is incorporated herein by reference.

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. Revoking or suspending Pharmacist License Number RPH 55204, issued to Ashkan Khabazian Ashkan Khabazian.

2. Ordering Ashkan Khabazian to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 4/1/10

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

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