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

11 In the Matter of the Accusation Against:  
12 **MOHAMED LAMINE FOFANA**  
315 Wayne Place #402  
13 Oakland, California 94606  
14  
15 **Pharmacy Technician Registration**  
**No. TCH 72507**  
16  
17 Respondent.

Case No.

**ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

- 20
- 21 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
  - 22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
  - 23 2. On or about October 24, 2006, the Board of Pharmacy issued Pharmacy Technician
  - 24 Registration Number TCH 72507 to Mohamed Lamine Fofana (Respondent). The Pharmacy
  - 25 Technician Registration was in full force and effect at all times relevant to the charges brought
  - 26 herein and will expire on March 31, 2010, unless renewed.

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**JURISDICTION**

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

**STATUTORY PROVISIONS**

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6       4.     Section 4300 of the Code states, in pertinent part:

7       “(a) Every license issued may be suspended or revoked. . . .”

8       5.     Section 4301 of the Code states, in pertinent part:

9       “The board shall take action against any holder of a license who is guilty of unprofessional  
10 conduct . . . . Unprofessional conduct shall include, but is not limited to, any of the following:

11       . . . .

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

15       . . . .

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

18       . . . .

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

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
2 of this provision. The board may take action when the time for appeal has elapsed, or the  
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment. . . .”

8 6. Title 16, California Code of Regulations, section 1770, states:

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

15 7. Section 4060 of the Code states, in pertinent part:

16 “No person shall possess any controlled substance, except that furnished to a person upon  
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
18 . . . .”

19 8. Section 4022 of the Code states, in pertinent part:

20 “‘Dangerous drug’” or ‘dangerous device’ means any drug or device unsafe for self-use in  
21 humans or animals, and includes the following:

22 . . . .  
23 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
24 prescription or furnished pursuant to Section 4006.”

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

1 **DRUGS**

2 10. "Oxycodone" is a Schedule II controlled substance, as designated by Health and  
3 Safety Code section 11055(b)(1)(N), and a dangerous drug pursuant to Business and Professions  
4 Code section 4022 in that it can be lawfully dispensed only by prescription.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Conviction of a Substantially Related Crime)**

7 11. Respondent is subject to disciplinary action under Code section 4301(l) in that he was  
8 convicted of a crime substantially related to the qualifications, functions, and duties of a  
9 pharmacy technician, as defined in Title 16, California Code of Regulations, section 1770. The  
10 circumstances are set forth in paragraph 12, below.

11 12. On or about September 18, 2009, in *People v. Mohamed Fofana*, Alameda County  
12 Superior Court case number 544814, Respondent pled no contest to violating Penal Code section  
13 484(a), Petty Theft, a misdemeanor. Imposition of sentence was suspended and Respondent was  
14 placed on three years probation under terms which included, but were not limited to, the surrender  
15 of his Pharmacy Technician Registration to the Board of Pharmacy until the conclusion of the  
16 Board's disciplinary proceedings, and a stay away order from all Walgreens pharmacies. The  
17 factual circumstances of said conviction are that on or about October 14, 2008, Respondent stole  
18 approximately 21 tablets of Oxycodone while working as a pharmacy technician at a Walgreens  
19 pharmacy in Oakland, California.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Violation of State Statutes**

22 **Regulating Controlled Substances and Dangerous Drugs)**

23 13. Respondent is subject to disciplinary action under Code section 4301(j) in that he  
24 engaged in unprofessional conduct by violating a statute of this state regulating controlled  
25 substances and dangerous drugs, namely Code section 4060. The circumstances are set forth in  
26 paragraph 12, above.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Commission of an Act Involving Dishonesty)**

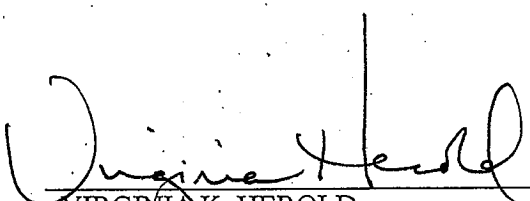
14. Respondent is subject to disciplinary action under Code section 4301(f) in that he engaged in unprofessional conduct by committing an act of dishonesty, namely petty theft. The circumstances are set forth in paragraph 12, above.

**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 Pharmacy Technician Registration Number TCH 72507, issued to Mohamed Lamine Fofana;
- 2. Ordering Mohamed Lamine Fofana 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; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 10/27/09



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

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