. [
. 1	KAMALA D. HARRIS					
2	Attorney General of California FRANK H. PACOE					
	Supervising Deputy Attorney General					
3	JOSHUA A. ROOM					
4	Deputy Attorney General State Bar No. 214663					
•	455 Golden Gate Avenue, Suite 11000					
5	San Francisco, CA 94102-7004					
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480					
_	Attorneys for Complainant					
7	BEFORE THE					
8 .	BOARD OF PHARMACY					
	DEPARTMENT OF CONSUMER AFFAIRS					
9	STATE OF CALIFORNIA					
10						
11	In the Matter of the Accusation Against: Case No. 3881					
	AMIR JOHN MALEKSHOAR					
12	10265 Bret Avenue					
13	Cupertino, CA 95014 ACCUSATION					
	Pharmacy Technician License No. TCH 88255					
14	Respondent.					
15	Respondent.					
16	Complement alleges					
10	Complainant alleges:					
17	<u>PARTIES</u>					
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	y				
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.					
20	2. On or about December 22, 2008, the Board of Pharmacy issued Pharmacy Technician					
21	License Number TCH 88255 to Amir John Malekshoar (Respondent). The Pharmacy Technician					
22	License was in full force and effect at all times relevant to the charges brought herein and will					
23	expire on May 31, 2012, unless renewed.					
24	<u>JURISDICTION</u>					
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of					
26	Consumer Affairs, under the authority of the following laws. All section references are to the					
27	Business and Professions Code (Code) unless otherwise indicated.	٠				
28						

.17

26 .

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 5. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or 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. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) 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.
- (j) The violation of any of the statutes of this state, of 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.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

- 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
 - 8. 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 her license or registration in a manner consistent with the public health, safety, or welfare."

- 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
- 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.
- 13. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

Section 4022 of the Code states, in pertinent pa	15. Sec	tion 4022	of the Cod	e states, in	pertinent p	art:
--	---------	-----------	------------	--------------	-------------	------

- "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 16. Depending on the strength, concentration, and/or compound(s) in which it appears, Codeine is a Schedule III and/or Schedule V controlled substance as designated by Health and Safety Code sections 11056(e) and 11058(c), and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FACTUAL BACKGROUND

- 17. In or about February 2010, Respondent was employed at a CVS Pharmacy (PHY 49696) located in San Jose, CA.
- 18. On or about February 7, 2010, Respondent was a passenger in an automobile that was the subject of a traffic stop conducted by officer(s) of the San Jose Police Department. A search of the vehicle discovered a plastic bottle containing a cough syrup with **codeine**, a Schedule V controlled substance, under the seat occupied by Respondent. Respondent admitted that he stole the bottle from his workplace with the intention of selling the contents.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraph 18 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

/// .

SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 20. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about August 30, 2010, in the criminal case *People v. Amir John Malekshoar*, Case No. C1072969 in Santa Clara County Superior Court, Respondent was convicted based on the conduct described in paragraph 18 above of violating Business and Professions Code section (4060) (Possession of Controlled Substance without Prescription), a misdemeanor. The conviction was entered as follows:
- a. On or about February 7, 2010, based on the conduct described in paragraph 18 above, Respondent was arrested on suspicion of violating Health and Safety Code section 11350 (Possession of Controlled Substance), Business and Professions Code section 4060 (Possession of Controlled Substance without Prescription), and Penal Code section 503 (Embezzlement).
- b. On or about March 29, 2010, Respondent was charged in Santa Clara County Superior Court, in Case No. C1072969, with violating (1) Business and Professions Code section 4060 (Possession of Controlled Substance without Prescription), a misdemeanor, and (2) Penal Code section 484-488 (Petty Theft Embezzlement by Employee), a misdemeanor.
- c. On or about August 30, 2010, Respondent pleaded *nolo contendere* to the first count, and the second count was dismissed pursuant to the plea. Imposition of sentence was suspended in favor of a period of court probation of two (2) years, with fines and fees.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance/Dangerous Drug)

21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, in that Respondent, as described in paragraph 18 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance and/or dangerous drug.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraph 18 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

24. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 18 to 23 above, engaged in unprofessional conduct.

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 License Number TCH 88255, issued to Amir John Malekshoar (Respondent);
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	
1	3. Taking such other and further action as is deemed necessary and proper.
2	
3	
. 4	DATED: 5/27/11 Uleyina Herold VIRGINIA HEROLD
5	Executive Officer
6	Board of Pharmacy Department of Consumer Affairs State of California
	Complainant
7	
8	SF2010202869 20416858.doc
9.	
10	
11	
12	
13	
14	
15	
16	
17	
18	
,	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	