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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3881

11 **AMIR JOHN MALEKSHOAR**  
12 **10265 Bret Avenue**  
13 **Cupertino, CA 95014**

**ACCUSATION**

14 **Pharmacy Technician License No. TCH 88255**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
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 JURISDICTION

- 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.

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1           7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
3 to the qualifications, functions or duties of the license.

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

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

11          9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13          10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
14 controlled substance, except that furnished upon a valid prescription/drug order.

15          11. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
18 or subterfuge; or (2) by the concealment of a material fact.

19          12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
20 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
21 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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

25                                   CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26          14. Section 4021 of the Code states:

27           “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
28 11053) of Division 10 of the Health and Safety Code.”

1 15. Section 4022 of the Code states, in pertinent part:

2 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
3 except veterinary drugs that are labeled as such, and includes the following:

4 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
5 prescription,’ ‘Rx only,’ or words of similar import.

6 ...  
7 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
8 prescription or furnished pursuant to Section 4006.”

9 16. Depending on the strength, concentration, and/or compound(s) in which it appears,  
10 **Codeine** is a Schedule III and/or Schedule V controlled substance as designated by Health and  
11 Safety Code sections 11056(e) and 11058(c), and a dangerous drug as designated by Business and  
12 Professions Code section 4022. It is a narcotic drug.

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14 FACTUAL BACKGROUND

15 17. In or about February 2010, Respondent was employed at a CVS Pharmacy (PHY  
16 49696) located in San Jose, CA.

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

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23 FIRST CAUSE FOR DISCIPLINE

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

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

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
5 in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession  
6 of, a controlled substance, without a prescription.

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8 FIFTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

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

14  
15 SIXTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

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

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22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
24 and that following the hearing, the Board of Pharmacy issue a decision:

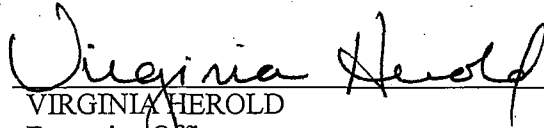
- 25 1. Revoking or suspending Pharmacy Technician License Number TCH 88255, issued  
26 to Amir John Malekshoar (Respondent);
- 27 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

5/27/11



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

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