

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
Deputy Attorney General
4 State Bar No. 131767
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3787

12 **SOHAIL MASIH**
13 **25710 Lawton Avenue**
14 **Loma Linda, CA 92354**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 43261**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 25, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 43261 to Sohail Masih (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein. The
25 Registration expired on November 30, 2010, and has not been renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

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

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

11 **STATUTORY PROVISIONS**

12 6. Section 490 of the Code states:

13 (a) In addition to any other action that a board is permitted to take against a
14 licensee, a board may suspend or revoke a license on the ground that the licensee has
15 been convicted of a crime, if the crime is substantially related to the qualifications,
16 functions, or duties of the business or profession for which the license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise any
17 authority to discipline a licensee for conviction of a crime that is independent of the
18 authority granted under subdivision (a) only if the crime is substantially related to the
19 qualifications, functions, or duties of the business or profession for which the
20 licensee's license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of
20 guilty or a conviction following a plea of nolo contendere. Any action that a board is
21 permitted to take following the establishment of a conviction may be taken when the
22 time for appeal has elapsed, or the judgment of conviction has been affirmed on
23 appeal, or when an order granting probation is made suspending the imposition of
24 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
25 the Penal Code.

26

27 7. Section 493 of the Code states:

28 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

1 may inquire into the circumstances surrounding the commission of the crime in order
2 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.

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

5 8. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

9

10 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 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.

12

13 (l) The conviction of a crime substantially related to the qualifications,
14 functions, and duties of a licensee under this chapter. The record of conviction of a
15 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
16 States Code regulating controlled substances or of a violation of the statutes of this
17 state regulating controlled substances or dangerous drugs shall be conclusive
18 evidence of unprofessional conduct. In all other cases, the record of conviction shall
19 be conclusive evidence only of the fact that the conviction occurred. The board may
20 inquire into the circumstances surrounding the commission of the crime, in order to
21 fix the degree of discipline or, in the case of a conviction not involving controlled
22 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.

23

24 **REGULATORY PROVISIONS**

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

26

27 (b) When considering the suspension or revocation of a facility or a personal
28 license on the ground that the licensee or the registrant has been convicted of a crime,

1 the board, in evaluating the rehabilitation of such person and his present eligibility for
2 a license will consider the following criteria:

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

4 (2) Total criminal record.

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

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

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

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

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

13 COSTS

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

18 FIRST CAUSE FOR DISCIPLINE

19 **(April 23, 2009 Criminal Convictions for Battery on a Spouse, Vandalism & Violating a**
20 **Domestic Violence Court Order on July 17, 2007)**

21 12. Respondent subjected his registration to discipline under sections 490 and 4301,
22 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
23 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

24 a. On or about April 23, 2009, in a criminal proceeding entitled *People of the State of*
25 *California v. Sohail Masih*, in Riverside County Superior Court case number RIF138724,
26 Respondent was convicted on his plea of guilty for violating Penal Code section 243, subdivision
27 (e), battery on a spouse; two counts of Penal Code section 594 (vandalism), and two counts of
28 Penal Code section 273.6, violating a court order to prevent domestic violence, misdemeanors.

1 b. As a result of the convictions, on or about April 23, 2009, Respondent was
2 committed to the custody of the Riverside County Sheriff for 120 days, with credit for one day, to
3 be served on consecutive weekends. Respondent was granted summary probation for 36 months
4 and ordered to perform 20 hours of community service, enroll and complete a 52-week domestic
5 violence program, and pay fines, fees, and restitution in the amount of \$1,007.00. A criminal
6 protective order was issued for Respondent's spouse until April 23, 2012. The court found
7 Respondent violated probation at hearings on June 22, 2009, March 26, 2010, and October 25,
8 2010. On October 25, 2010, Respondent was sentenced to an additional 90 days in custody in the
9 RSO Weekender Program, and ordered to re-enroll in community service and the domestic
10 violence programs.

11 c. The circumstances that led to the convictions are that on or about the
12 afternoon of July 17, 2007, the Riverside Police Department was dispatched to investigate a
13 report of battery. The victim, Respondent's estranged wife, reported that she was walking to a
14 location in Riverside to pick up her daughter when Respondent approached her from behind on
15 foot. The victim had a valid restraining order against Respondent at the time. Respondent
16 grabbed the victim's purse demanding money. When he could not get the purse away from the
17 victim, Respondent grabbed her hair pulling her head back, then slapped her across the face with
18 an open hand. Respondent fled the scene. The victim locked herself in her vehicle. A short time
19 later, Respondent returned in a vehicle. He exited his vehicle and slashed two (left side) tires on
20 the victim's vehicle and then departed. Respondent was subsequently arrested.

SECOND CAUSE FOR DISCIPLINE

(February 23, 2010 Criminal Conviction for Grand Theft)

23 13. Respondent subjected his registration to discipline under sections 490 and 4301,
24 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
25 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

26 a. On or about February 23, 2010, in a criminal proceeding entitled *People of the*
27 *State of California v. Sohail Masih*, in San Bernardino County Superior Court case number
28 FSB801730, Respondent was convicted on his plea of guilty for violating Penal Code section

1 487, subdivision (a), grand theft, a felony. Additional counts of first degree residential burglary
2 (Pen. Code, § 459) and receiving stolen property (Pen. Code, § 496(a)) were dismissed pursuant
3 to a plea agreement.

4 b. As a result of the conviction, on or about February 23, 2010, Respondent
5 was committed to the custody of the Riverside County Sheriff for 240 days, with credit for 44
6 days, to be served on consecutive weekends. Respondent was granted supervised probation for
7 36 months, and ordered to comply with the terms of felony probation including a prohibition
8 against the consumption of alcohol and illegal drugs, and attendance at NA/AA meetings. On or
9 about May 10, 2010, a hearing was held and Respondent was found in violation of probation.
10 Respondent was committed to serve 240 days in the San Bernardino County Jail, with credit for
11 77 days served, without parole. The original terms of felony probation were reinstated.

12 c. The circumstances that led to the conviction are that on or about March 20,
13 2008, an officer from the Redlands Police Department responded to a residence regarding a
14 burglary. The victim, Respondent's sister, reported to the officer that she hid her expensive
15 jewelry inside the pocket of a jacket she kept in her closet. She estimated the value of the missing
16 jewelry at approximately \$6,100. The same day, she received a call from a woman who told her
17 that Respondent had gone to a Riverside pawn shop and pawned some of her jewelry. Her jacket
18 and other jewelry were still at the shop and had not yet been pawned. The victim checked her
19 closet and discovered that her jacket had been stolen. She immediately called her mother, who
20 then called Respondent. Respondent told his mother that he, a friend, and his estranged wife
21 broke into the victim's house and took her jewelry. The victim stated that her brother is addicted
22 to methamphetamine and believed he stole her jewelry to purchase drugs. Respondent used to
23 live with the victim for a period of time, but moved out in January 2008. Further investigation
24 into the matter revealed that Respondent had sold some of the jewelry to his estranged wife; she
25 claimed she purchased the jewelry with the intent of returning it to her sister-in-law. Some of the
26 jewelry was recovered from Respondent's wife. A receipt from the pawn shop dated March 16,
27 2008, indicated that Respondent received \$200 for a 22 karat gold necklace. Both Respondent
28 and his wife were charged with residential burglary, grand theft, and receiving stolen property.

1 THIRD CAUSE FOR DISCIPLINE

2 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude & Deceit)**

3 14. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
4 Code in that on or about March 2008, Respondent stole jewelry from his sister, a family member,
5 and pawned it for drug money, an act of moral turpitude, as detailed in paragraph 13, above.

6 **PRAYER**

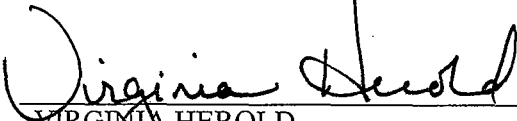
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 43261,
10 issued to Sohail Masih;

11 2. Ordering Sohail Masih to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

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

15
16 DATED: 1/4/11


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

23
24
25
26
27
28 SD2010703230