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

12 In the Matter of the Petition to Revoke  
13 Probation Against,

Case No. 5889

14 **HOSSEIN SAFAVI SHAMLOU**  
15 **3355 Ruffin Road #N2**  
16 **San Diego, CA 92123**

**PETITION TO REVOKE PROBATION**

17 **Pharmacy Technician Registration No. TCH**  
18 **110334**

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in  
22 her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of  
23 Consumer Affairs.

24 2. On February 13, 2013, the Board issued Pharmacy Technician Registration  
25 Number TCH 110334 to Hossein Safavi Shamlou (Respondent). The Pharmacy Technician  
26 Registration expired on March 31, 2016, and has not been renewed.

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**PRIOR DISCIPLINE**

3. In a disciplinary action entitled “In the Matter of Statement of Issues Against Hossein Safavi Shamlou,” Case No. 4170, the Board adopted a decision by the Office of Administrative Hearings, effective December 28, 2012, in which Respondent’s Pharmacy Technician Registration was revoked. However, the revocation was stayed and Respondent’s Pharmacy Technician Registration was placed on probation for a period of two (2) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

**JURISDICTION**

4. Business and Professions Code (Code) section 4300, subdivision (a) states, “Every license issued may be suspended or revoked.”

5. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

6. This Petition to Revoke Probation is brought before the Board under Probation Term and Condition Number 13 of the Decision and Order. That term and condition states:

**Violation of Probation.**

If Respondent violates the conditions of his probation, after giving notice and an opportunity to be heard, the Board may set aside the order and impose the stayed discipline of Respondent’s license. During probation, if an Accusation or Petition to Revoke Probation is filed against Respondent’s license or the Attorney General’s Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent’s license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition to Revoke Probation has been resolved by a Board Decision.

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Cooperate with Board Staff)**

3 7. Condition 4 of Respondent's probation, states:

4 Respondent shall cooperate with the Board's inspection program and with  
5 the Board's monitoring and investigation of his compliance with the terms and  
6 conditions of his probation. Failure to cooperate shall be considered a violation of  
7 probation.

8 8. Respondent's probation is subject to revocation because he failed to fully comply  
9 with Probation Condition 4, referenced above. The facts and circumstances regarding this  
10 violation are more fully described in the Second, Third, Fourth, Fifth, and Sixth Causes to  
11 Revoke Probation, below, which are incorporated herein by reference.

12 **SECOND CAUSE TO REVOKE PROBATION**

13 **(Report to the Board)**

14 9. Condition 2 of Respondent's probation, states:

15 Respondent shall report to the Board, on a quarterly basis, on the schedule  
16 directed by the Board or its designee. The report shall be in person or in writing as  
17 the Board or its designee directs. Among other requirements, Respondent shall  
18 state in each report, under penalty of perjury, whether there has been compliance  
19 with all the terms and conditions of probation. Failure to submit timely reports in  
20 the form directed by the Board or its designee shall be considered a violation of  
21 probation. Any period(s) of delinquency in submission of reports as directed by  
22 the Board or its designee may be added to the period of probation. If the final  
23 probation report is not made as directed, probation shall be automatically  
24 extended until such time as the final report is made and accepted by the Board.

25 10. Respondent's probation is subject to revocation because he failed to comply with  
26 Probation Condition 2, referenced above. The facts and circumstances regarding this violation  
27 are that Respondent submitted late to the Board his Quarterly Reports for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>  
28 quarters of 2013, and the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2014 as required by the Board. Respondent failed  
to submit to the Board his Quarterly Report for the 4<sup>th</sup> quarter of 2014. Quarterly Reports were  
received for the 3<sup>rd</sup> quarter of 2014 and the 1<sup>st</sup> quarter of 2015, however, no Quarterly Report  
was ever received thereafter.

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1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Probation Monitoring Costs)**

3 11. Condition 8 of Respondent's probation, states:

4 Respondent shall pay any costs associated with probation monitoring as  
5 determined by the Board for each year of probation. Such costs shall be payable  
6 to the Board on a schedule directed by the Board or its designee. Failure to pay  
such costs in a timely manner shall be considered a violation of probation.

7 12. Respondent's probation is subject to revocation because he failed to comply with  
8 Probation Condition 8, referenced above. The circumstances regarding this violation are that  
9 Respondent agreed to pay the annual monitoring costs which are \$153.00 for the first year,  
10 \$204.00 for the second year, and \$121.00 for the third year. On October 19, 2015, Respondent  
11 paid \$57.00, which was credited to his first year probation monitoring cost. After the initial  
12 payment, Respondent made no further payments towards probation monitoring costs until May  
13 16, 2016, when the Board received payment of \$204.00 for the second year and \$121.00 for the  
14 third year. On May 23, 2016, the Board sent Respondent a letter stating that the remaining  
15 balance of \$96.00 for the first year probation monitoring fees was still delinquent. Respondent  
16 has not made any other payment to the Board.

17 **FOURTH CAUSE TO REVOKE PROBATION**

18 **(Tolling of Probation)**

19 13. Condition 12 of Respondent's probation, states:

20 Except during any period of suspension, at all times while on probation,  
21 Respondent shall maintain employment as a pharmacy technician in the State of  
22 California for a minimum of eighty (80) hours per calendar month. Any month  
23 during which this minimum is not met shall toll the probationary period, i.e., the  
period of probation shall be extended by one month for each month during which  
24 this minimum is not met. During any period of tolling probation, Respondent  
must comply with all terms and conditions of probation.

25 Should Respondent cease working as a pharmacy technician for a  
26 minimum of 80 hours per calendar month in California, Respondent must notify  
the Board, in writing, within 10 days of cessation of work and must notify the  
27 Board in writing, within 10 days, of the resumption of employment. Any failure to  
provide such notification(s) shall be considered a violation of probation.

28 It shall be a violation of probation for Respondent's probationary period to  
remain tolled for more than 36 months.

1           “Cessation of work” means a calendar month during which Respondent  
2 does not work for a minimum of 80 hours as a pharmacy technician (as defined in  
3 Business and Professions Code section 4115). “Resumption of work” means any  
4 calendar month during which Respondent works as a pharmacy technician for a  
5 minimum of 80 hours as a pharmacy technician (as defined by Business and  
6 Professions Code section 4115).

7           14. Respondent’s probation is subject to revocation because she failed to comply with  
8 Probation Condition 12, referenced above. The facts and circumstances regarding this violation  
9 are as follows:

10           a. On April 19, 2013, Respondent attended an office conference in which all  
11 terms and conditions were explained to him by Board representatives, including Term 12, which  
12 specifies that, except for periods of suspension, Respondent shall at all times while on probation  
13 be employed as a Pharmacy Technician in California for a minimum of eighty (80) hours per  
14 calendar month. Any month for which this minimum is not met shall toll the period of probation.  
15 During any period of tolling probation, Respondent must comply with all terms and conditions of  
16 probation. It shall be a violation of probation for Respondent’s probationary period to remain  
17 tolled for more than thirty-six (36) months.

18           b. On August 21, 2013, the Board sent Respondent a letter stating that his  
19 probation had been tolled due to the fact that he had not been working in the practice of  
20 pharmacy since the effective date of his probation, namely February 13, 2013.

21           c. During the entire two-year period of probation, from February 13, 2013 to  
22 February 12, 2015, Respondent failed to work in the field of pharmacy, thus Respondent’s case  
23 was tolled for the entire probationary period. Respondent’s probationary period was  
24 automatically extended past the original two years due to the fact that he had not completed his  
25 probationary requirements and his case had been tolled.

26           d. On July 27, 2015, the Board received an employment verification form  
27 from Respondent, which stated he began employment as a pharmacy technician on July 17,  
28 2015, at Rancho Santa Fe Pharmacy.

          e. On October 20, 2015, the Board received a letter from a Manager and  
Pharmacist-In-Charge (PIC) at Rancho Santa Fe Pharmacy. The PIC stated that he had

1 terminated Respondent's employment at the pharmacy after three (3) months, on October 17,  
2 2015, due to the fact that Respondent's "performance is not efficient enough to be kept employed  
3 at my pharmacy."

4 f. On October 17, 2015, Respondent's probation was again tolled due to his  
5 failure to work in the field of pharmacy.

6 g. On May 23, 2016, the Board sent Respondent a letter stating that his case  
7 had been tolled for over thirty-six (36) months, in violation of probation.

8 h. Respondent reported to the Board that he is working as a salesperson at  
9 Cricket Wireless and as a parking valet for Ace Parking. He is not currently working in the field  
10 of pharmacy, and has only held one position in a pharmacy during the probationary period,  
11 which lasted for only three (3) months.

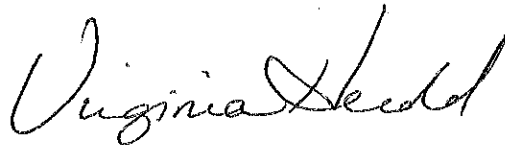
12 **PRAYER**

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

- 15 1. Revoking the probation that was granted by the Board of Pharmacy in Case No.  
16 4170 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician  
17 Registration No. TCH 110334 issued to Hossein Safavi Shamlou;
- 18 2. Revoking or suspending Pharmacy Technician Registration No. TCH 110334,  
19 issued to Hossein Safavi Shamlou; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21  
22  
23 DATED: \_\_\_\_\_

9/23/16



24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 4170**

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

In the Matter of the Statement of Issues Against:

Case No. 4170

**HOSSEIN SHAMLOU**

Pharmacy Technician Applicant

Respondent.

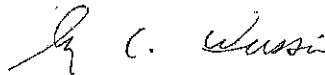
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 28, 2012.

It is so ORDERED on November 28, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President



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

In the Matter of the Statement of Issues  
Against:

HOSSEIN SAFAVI SHAMLOU  
4260 Don Way  
San Diego, CA 92117

Respondent.

Case No. 4170

OAH No. 2012030075

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on October 11, 2012.

Rita Lane, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Hossein Safavi Shamlou represented himself.

The matter was submitted on October 23, 2012.<sup>1</sup>

<sup>1</sup> The record remained open for Respondent to submit documentary evidence to establish that the conviction in Superior Court Case No. SCD175392 had been expunged. On October 18, 2012, Respondent filed a letter that stated that he learned that this conviction had not been expunged. He attached the Superior Court petition to expunge the conviction that he filed on October 18, 2012. The documents have been marked Exhibit C. The hearing on this Petition is set for November 21, 2012. Respondent requested a continuance until after November 21, 2012, in order to provide evidence that the conviction had been expunged.

On October 22, 2012, Complainant filed her response, marked Exhibit 9. Complainant objected to keeping the record open to allow Respondent to file his evidence of his expunged conviction in Superior Court Case No. SCD175392. Complainant argued that Respondent's documentary evidence was untimely and that the Administrative Law Judge ordered the record kept open for Respondent to establish that the conviction had been expunged prior to the hearing on October 11, 2012, not to give him time to request the

## FACTUAL FINDINGS

1. On December 7, 2010, the Board of Pharmacy (Board) received an application for a Pharmacy Technician Registration from Hossein Safavi Shamlou (Respondent). On November 29, 2010, Respondent certified, under penalty of perjury, to the truthfulness of all statements, answers, and representations in the application. On June 7, 2011, the Board denied the application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and (a)(3), based upon his criminal conviction. Respondent appealed this decision.

2. Virginia Herold (Complainant) filed Statement of Issues, Case No. 4170, dated December 13, 2011, in her official capacity as the Executive Officer of the Board.

Respondent filed a timely request for hearing.

3. On April 7, 2004, in the Superior Court of California, County of San Diego, in the case entitled *The People of the State of California vs. Hossein Shamlou*, Case No. SCD175392, on his plea of guilty, Respondent was convicted of violating Penal Code section 261.5, subdivision (c) (unlawful sexual intercourse with a minor more than three years younger).

4. The facts and circumstances underlying the conviction are that, between March 3, 2002 and March 2, 2003, Respondent unlawfully engaged in sexual intercourse with Haneh M., a minor, who was not his spouse, and who was more than three years younger than he was.

5. On April 7, 2004, in the Superior Court of California, County of San Diego, in the case entitled *The People of the State of California vs. Hossein Shamlou*, Case No. SCD180143, on his plea of guilty, Respondent was convicted of violating Penal Code section 1320, subdivision (b) (failure to appear on own recognizance).

6. The facts and circumstances underlying the conviction are that on October 30, 2003, Respondent was charged with the commission of three felonies, released from custody and willfully failed to appear in court as promised on the felony matters.

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Superior Court to expunge this conviction. In addition, Complainant requested that the certified copy of the documents admitted as Exhibit 5 be substituted for the uncertified documents admitted as Exhibit 5.

Respondent's request for a continuance is denied. Complainant's request to substitute the certified documents is denied.

On October 23, 2012, the record was closed, and the matter was submitted.

7. As a consequence of the convictions (Findings 3 and 5), the Court placed Respondent on three years formal probation on terms and conditions that included, among other things,

- Committed to the custody of the sheriff for 180 days, with credit for 24 days (the Court allowed Respondent to complete custody time on work furlough); and
- Pay fines, fees and penalty assessment;

The sentence was to run concurrent in each case.

8. Pursuant to California Code of Regulations, title 16, section 1770, the crimes of which Respondent has been convicted (Findings 3, 4, 5, and 6) are substantially related to the qualifications, duties and functions of a pharmacy technician.

9. Between March 3, 2002 and March 2, 2003, Respondent committed acts involving moral turpitude when he unlawfully engaged in sexual intercourse with Haneh M., a minor, who was not his spouse, and who was more than three years younger than he was.

10. Complainant alleged that Respondent committed an act of dishonesty, fraud, and/or deceit when he willfully failed to appear in court as he promised on felony matters. Complainant established that Respondent violated Penal Code section 1320 subdivision (b) but no additional facts. A violation of Penal Code section 1320, subdivision (b), in and of itself, does not constitute an act of dishonesty, fraud, and/or deceit. Therefore it was not established that Respondent committed an act of dishonesty, fraud, and/or deceit when he violated Penal Code section 1320 subdivision (b).

11. Hamideh Shamlou, Respondent's mother, provided some explanation of the facts and circumstances underlying Respondent's conviction for sexual intercourse with a minor who was three years younger. She testified that they moved from Iran to the United States 23 years ago. In Iran, they have arranged marriages. Nevertheless, both Respondent and his mother understand that they are required to obey the laws in the United States. Respondent admitted that he had sexual intercourse with Haneh M. between March 2002 and March 2003. He testified that she told him that she was 19 years old; before March 2003, he learned that she was 17 years old when he saw her identification.

12. Respondent completed probation in his criminal cases, and his conviction has been expunged in San Diego Superior Court Case No. SCD180143.

13. Since his convictions, Respondent has maintained employment, has supported his five year-old son and has remained crime free.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a)(1), cause exists to deny Respondent's application for registration as a pharmacy technician in that Respondent has been convicted of crimes that are substantially related to the qualifications, duties or functions of a pharmacy technician, by reason of Findings 3, 4, 5, 6 and 8.

2. Cause does not exist to deny Respondent's application for registration as a pharmacy technician pursuant to Business and Professions Code section 480, subdivision (a)(2). It was not established that Respondent committed an act of dishonesty, fraud and/or deceit when he willfully failed to appear in court as promised on a felony matter, by reason of Findings 5, 6, 7 and 10.

3. Pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), in that he committed acts that if done by a licensed pharmacy technician would be grounds for suspension or revocation of the license, by reason of Findings 3, 4, 5, 6, 8, 9 and 10.

4. The facts, the violations, the Board's criteria for rehabilitation set forth in California Code of Regulations, title 16, section 1769 and evidence of rehabilitation has been considered. It has been more than nine years since Respondent engaged in the criminal acts that resulted in Respondent's convictions. Respondent successfully completed probation in his criminal cases, and the conviction in Superior Court Case No. SCD180143 has been expunged. It would not be contrary to the public interest to issue Respondent a probationary license with appropriate terms and conditions at this time.

## ORDER

Upon satisfaction of all statutory and regulatory requirements for pharmacy technician registration, the Pharmacy Board shall issue a pharmacy technician registration to Respondent Hossein S. Shamlou, and it shall be revoked immediately; the order of revocation shall be stayed, and Respondent Hossein S. Shamlou shall be placed on probation for two years upon the following terms and conditions.

1. **Obey All Laws.**

Respondent shall obey all State and Federal laws and regulations.

Respondent shall report any of the following events to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, State and Federal food and drug laws, or State and Federal controlled substances laws,

- a plea of guilty or nolo contendere to any criminal complaint, information or indictment in any State or Federal criminal proceeding,
- a conviction of any crime, and
- discipline, citation or other administrative action filed by any State or Federal Agency which involves Respondent's Pharmacy Technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing or charging for any drug, device or controlled substance

Failure to timely report any such occurrence shall be considered a violation of probation.

**2. Report to the Board.**

Respondent shall report to the Board, on a quarterly basis, on the schedule directed by the Board or its designee. The report shall be in person or in writing as the Board or its designee directs. Among other requirements, Respondent shall state in each report, under penalty of perjury, whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in the form directed by the Board or its designee shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed by the Board or its designee may be added to the period of probation. If the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

**3. Interview with the Board.**

Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

**4. Cooperate with Board Staff.**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of his compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

**5. Notice to Employers.**

During the period of probation, Respondent shall notify all present and prospective employers of the Decision in case number 4170 and the terms and conditions imposed on him by the Decision, as follows:

- Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment, he shall cause his direct

supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board, in writing, acknowledging that the individual(s) has/have read the Decision in case number 4170 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

- If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Decision in case number 4170 in advance of Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.
- Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment by or through a pharmacy employment service, Respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the Decision in case number 4170 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

Within the meaning of this provision, "Employment" shall include full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician registration is a requirement or criterion for employment, whether Respondent is considered an employee, independent contractor or volunteer.

#### **6. Work Site Monitor.**

Within 10 days of the effective date of this Decision, Respondent shall identify a work site monitor, who must be approved by the Board. The work site monitor shall be responsible for supervising Respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports, in writing, to the Board on a quarterly basis. Should the designated work site monitor determine, at any time during the probationary period, that Respondent has not maintained sobriety, he/she shall notify the Board immediately, either orally or in writing, as the Board or its designee directed. Should Respondent change employment, a new work site monitor must be designated and approved by the Board within 10 days of Respondent commencing new employment.

Failure to identify an acceptable initial or replacement work site monitor and failure to ensure that the work site monitor submits quarterly reports to the Board in a timely manner shall be constitute a violation of probation.

**7. Notification of Departure.**

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than five days, Respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

**8. Probation Monitoring Costs.**

Respondent shall pay any costs associated with probation monitoring as determined by the Board for each year of probation. Such costs shall be payable to the Board on a schedule directed by the Board or its designee. Failure to pay such costs in a timely manner shall be considered a violation of probation.

**9. Status of License.**

While on probation, Respondent shall maintain an active, current pharmacy technician license with the Board. Failure to do so shall be considered a violation of probation.

During the period of probation, if Respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

**10. License Surrender While Registration is on Probation/Suspension.**

Following the effective date of this Decision, should Respondent cease work due to retirement or health or otherwise be unable to satisfy the terms and conditions of probation, Respondent may tender his pharmacy technician registration to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or to take other appropriate and reasonable action. Upon acceptance of the surrender of his license, Respondent will no longer be subject to the terms and conditions of probation. The surrender of his license shall constitute a record of discipline and shall become a part of the Respondent's license history with the Board.

Within 10 days of notification by the Board of its acceptance of Respondent's surrender of his license, Respondent shall relinquish his pharmacy technician license to the Board. Respondent may not re-apply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall satisfy the requirements applicable to the license sought as of the date the application for that

license is submitted to the Board.

**11. Notification of Change in Name, Residence Address, Mailing Address, or Employment.**

Within 10 days of any change of employment, Respondent shall notify the Board in writing. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and his work schedule, if known. Further, Respondent shall notify the Board, in writing, within 10 days, of a change in name, residence address and mailing address or telephone number.

Failure to timely notify the Board of any change in employer, name, address, or telephone number shall be considered a violation of probation.

**12. Tolling of Probation.**

Except during any period of suspension, at all times while on probation, Respondent shall maintain employment as a pharmacy technician in the State of California for a minimum of eighty (80) hours per calendar month. Any month during which this minimum is not met shall toll the probationary period, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any period of tolling probation, Respondent must comply with all terms and conditions of probation.

Should Respondent cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, Respondent must notify the Board, in writing, within 10 days of cessation of work and must notify the Board in writing, within 10 days, of the resumption of employment. Any failure to provide such notification(s) shall be considered a violation of probation.

It shall be a violation of probation for Respondent's probationary period to remain tolled for more than 36 months.

"Cessation of work" means a calendar month during which Respondent does not work for a minimum of 80 hours as a pharmacy technician (as defined in Business and Professions Code section 4115). "Resumption of work" means any calendar month during which Respondent works as a pharmacy technician for a minimum of 80 hours as a pharmacy technician (as defined by Business and Professions Code section 4115).

**13. Violation of Probation.**

If Respondent violates the conditions of his probation, after giving notice and an opportunity to be heard, the Board may set aside the order and impose the stayed discipline of Respondent's license. During probation, if an Accusation or Petition to Revoke Probation is filed against Respondent's license or the Attorney General's Office has been requested to

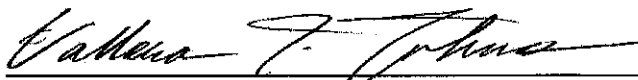


prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition to Revoke Probation has been resolved by a Board Decision.

**14. Completion of Probation.**

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license shall be fully restored.

DATED: November 5, 2012



VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
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*Attorneys for Complainant*

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

11  
12 In the Matter of the Statement of Issues Against: Case No. 4170  
13 **HOSSEIN SAFAVI SHAMLOU** **STATEMENT OF ISSUES**  
14 **4260 Don Way**  
**San Diego, CA 92117**  
15 Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about December 7, 2010, the Board of Pharmacy, Department of Consumer  
21 Affairs received an application for a Pharmacy Technician Registration from Hossein Safavi  
22 Shamlou (Respondent). On or about November 29, 2010, Hossein Safavi Shamlou certified  
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in the  
24 application. The Board denied the application on June 7, 2011.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to  
2 any applicant guilty of unprofessional conduct."

### 3 STATUTORY PROVISIONS

4 5. Section 475 of the Code states:

5 (a) Notwithstanding any other provisions of this code, the provisions of this  
6 division shall govern the denial of licenses on the grounds of:

7 (1) Knowingly making a false statement of material fact, or knowingly  
8 omitting to state a material fact, in an application for a license.

9 (2) Conviction of a crime.

10 (3) Commission of any act involving dishonesty, fraud or deceit with the  
11 intent to substantially benefit himself or another, or substantially injure another.

12 (4) Commission of any act which, if done by a licentiate of the business or  
13 profession in question, would be grounds for suspension or revocation of license.

14 . . . .

15 6. Section 480 of the Code states:

16 (a) A board may deny a license regulated by this code on the grounds that the  
17 applicant has one of the following:

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

25 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
26 substantially benefit himself or herself or another, or substantially injure another.

27 (3) (A) Done any act that if done by a licentiate of the business or profession in  
28 question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime  
or act is substantially related to the qualifications, functions, or duties of the business  
or profession for which application is made.

. . . .

7. 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:

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- (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.

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 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:

....

(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.

....

(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

1 suspending the imposition of sentence, irrespective of a subsequent order under  
2 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
3 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
4 dismissing the accusation, information, or indictment.

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### 6 REGULATORY PROVISIONS

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

8 (a) When considering the denial of a facility or personal license under Section  
9 480 of the Business and Professions Code, the board, in evaluating the rehabilitation  
10 of the applicant and his present eligibility for licensing or registration, will consider  
11 the following criteria:

12 (1) The nature and severity of the act(s) or offense(s) under consideration as  
13 grounds for denial.

14 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
15 consideration as grounds for denial under Section 480 of the Business and Professions  
16 Code.

17 (3) The time that has elapsed since commission of the act(s) or crime(s) referred  
18 to in subdivision (1) or (2).

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

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

22 . . . .

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

24 For the purpose of denial, suspension, or revocation of a personal or facility  
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
26 Professions Code, a crime or act shall be considered substantially related to the  
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
28 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.

### 29 FIRST CAUSE FOR DENIAL OF APPLICATION

30 (April 7, 2004 Criminal Conviction for Unlawful Sex With a Minor)

31 12. Respondent's application for registration as a pharmacy technician is subject to denial  
32 under section 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime  
33 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

34 The circumstances are as follows:

1 a. On or about April 7, 2004, in a criminal proceeding entitled *State of California*  
2 *v. Hossein Shamlou*, in San Diego County Superior Court, case number CD175392, Respondent  
3 was convicted on his plea of guilty to violating Penal Code section 261.5, subdivision (c),  
4 unlawful sexual intercourse with a minor more than 3 years younger, a felony. The court  
5 dismissed an additional count of violating Penal Code section 261.5, subdivision (c), as well as a  
6 violation of Penal Code section 261.5, subdivision (d), unlawful sexual intercourse with a minor  
7 under 16 years of age, pursuant to a plea agreement.

8 b. As a result of the conviction, on or about April 7, 2004, Respondent was  
9 sentenced to three years formal probation, and ordered to serve 180 days in jail, with credit for 24  
10 days, to be served on a work furlough program, and payment of fines, fees, and restitution.

11 c. The facts and circumstances that led to the conviction are that on or about and  
12 between March 3, 2001 and April 4, 2003, Respondent, who was over the age of 21 years old,  
13 engaged in sexual intercourse with a minor, not his wife, who was under the age of 16 years old.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(March 9, 2004 Criminal Conviction for Failure to Appear on October 30, 2003)**

16 13. Respondent's application for registration as a pharmacy technician is subject to denial  
17 under section 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime  
18 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.  
19 The circumstances are as follows:

20 a. On or about March 9, 2004, in a criminal proceeding entitled *State of California*  
21 *v. Hossein Shamlou*, in San Diego County Superior Court, case number SCD180143, Respondent  
22 was convicted on his plea of guilty to violating Penal Code section 1320, subdivision (b), failure  
23 to appear on his own recognizance, a felony.

24 b. As a result of the conviction, on or about April 7, 2004, Respondent was  
25 sentenced to three years formal probation, and ordered to serve 180 days in jail, with credit for 24  
26 days, and payment of fines, fees, and restitution. The sentence was ordered to run concurrent  
27 with the sentence imposed in case number CD175392, detailed in paragraph 12, above. On  
28 October 10, 2010, the court granted Respondent's petition for relief and dismissed the conviction.

1 c. The facts and circumstances that led to the conviction are that on or about  
2 October 30, 2003, Respondent was charged with the commission of a felony (three counts of  
3 unlawful sexual intercourse with a minor) in case number CD175392. Respondent was released  
4 from custody on bail, on his own recognizance, and failed to appear in court as ordered.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(Act Involving Dishonesty, Fraud, or Deceit)**

7 14. Respondent's application is subject to denial under sections 480, subdivision (a)(2) of  
8 the Code in that he committed an act of dishonesty, fraud and/or deceit when he willfully failed to  
9 appear in court as promised on a felony matter, as detailed in paragraph 13, above.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Commission of Acts Which if Done by a Licensee Would be  
12 Grounds for Suspension or Revocation of License)**

13 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
14 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be  
15 grounds for suspension or revocation of the license. The circumstances are as follows:

16 a. On or about April 7, 2004, and March 9, 2004, as detailed in paragraphs 11  
17 and 12, above, Respondent was convicted of crimes substantially related to the qualifications,  
18 functions, and duties of a licensed pharmacy technician, which would be grounds for discipline  
19 under section 4301, subdivision (l) of the Code.

20 b. On or about and between March 3, 2001 and April 4, 2003, as detailed in  
21 paragraph 12, above, Respondent committed acts involving moral turpitude, which would be  
22 grounds for discipline under section 4301, subdivision (f) of the Code.

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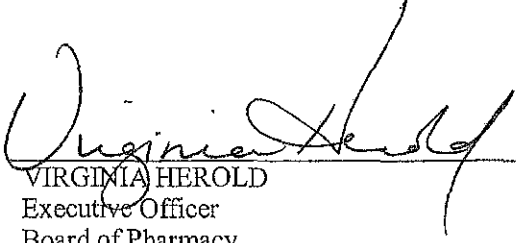
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**PRAYER**

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. Denying the application of Hossein Safavi Shamlou for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/6/11   
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011801060