

1 XAVIER BECERRA
Attorney General of California
2 LINDA SCHNEIDER
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:
11 **EMOONAH, INC., DBA WEST AID**
12 **PHARMACY AND MEDICAL SUPPLY;**
13 **ROUZBEH JAVAHERIAN, OWNER**
14 **1015 S. Fairfax Ave.**
15 **Los Angeles, CA 90019**

16 **Pharmacy Permit No. PHY 48785,**
17 **and**
18 **ROUZBEH JAVAHERIAN**
19 **6230 Wilshire Blvd., Ste. 1164**
20 **Los Angeles, CA 90048**

21 **Pharmacist License No. RPH 55801**
22 **Respondent.**

Case No. 5941
ACCUSATION

22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
26 2. On or about March 27, 2008, the Board of Pharmacy issued Pharmacy Permit Number
27 PHY 48785 to Respondent Emoonah, Inc., dba West Aid Pharmacy and Medical Supply
28 (Respondent West Aid Pharmacy). Respondent Rouzbeh Javaherian was the President, sole

1 owner, and Pharmacist-In-Charge of Respondent West Aid Pharmacy from March 27, 2008, to
2 April 16, 2015. The Pharmacy Permit expired on May 31, 2016, and has not been renewed. The
3 Pharmacy Permit was cancelled on April 16, 2016, due to Discontinuance of Business, effective
4 February 25, 2015.

5 3. On or about June 8, 2004, the Board of Pharmacy issued Pharmacist License Number
6 RPH 55801 to Respondent Rouzbeh Javaherian (Respondent Javaherian). The Pharmacist License
7 expired on May 31, 2016, and has not been renewed.

8 JURISDICTION

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

12 5. Section 4300, subdivision (a), of the Code states that “[e]very license issued may be
13 suspended or revoked.”

14 6. Section 4300.1 of the Code states:

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

20 STATUTORY PROVISIONS

21 7. Section 4301 of the Code states, in pertinent part:

22 “The board shall take action against any holder of a license who is guilty of unprofessional
23 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
24 not limited to, any of the following:

25 . . .

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

1 “(g) Knowingly making or signing any certificate or other document that falsely represents
2 the existence or nonexistence of a state of facts. “

3 ...

4 “(l) The conviction of a crime substantially related to the qualifications, functions, and
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
12 dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
15 of this provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
20 indictment.”

21 ...

22 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable
24 federal and state laws and regulations governing pharmacy, including regulations established by
25 the board or by any other state or federal regulatory agency.”

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8. Section 4302 of the Code states:

“The board may deny, suspend, or revoke any license of a corporation where conditions exist in relation to any person holding 10 percent or more of the corporate stock of the corporation, or where conditions exist in relation to any officer or director of the corporation that would constitute grounds for disciplinary action against a licensee.”

9. Section 4307, subdivision (a), of the Code states, in pertinent part:

“Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

“(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

“(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.”

REGULATORY PROVISIONS

10. 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 his license or registration in a manner consistent with the public health, safety, or welfare."

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1 11. California Code of Regulations, title 16, section 1761, subdivision (a) states:

2 “(a) No pharmacist shall compound or dispense any prescription which contains any
3 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
4 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
5 validate the prescription.”

6 12. Code of Federal Regulations, title 21 section 1304.11, subdivision (c) states:

7 “(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a
8 new inventory of all stocks of controlled substances on hand at least every two years. The biennial
9 inventory may be taken on any date which is within two years of the previous biennial inventory
10 date.”

11 **COST RECOVERY**

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 14. Respondent West Aid Pharmacy and Respondent Javaherian are subject to
21 disciplinary action under sections 4300, 4301, subdivisions (l) and (o), and 4302, of the Code, in
22 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
23 unprofessional conduct, in that Respondent Javaherian committed a substantially related crime, as
24 follows:

25 a. On or about August 3, 2015, after pleading guilty, Respondent Javaherian was
26 convicted of one felony count of healthcare fraud, in violation of Title 18, United States Code,
27 Sections 1347 and 2(b) [causing an act to be done], in the criminal proceeding entitled *United*
28 *States of America v. Rouzbeh Javaherian* (United States District Court for the Central District of

1 California, 2015, No. CR 15 00045). The Court sentenced Respondent Javaherian to 18 months in
2 jail, placed him on supervised release for a term of one year, and ordered him to pay \$644,060.00
3 in restitution.

4 b. The circumstances underlying the conviction are that from approximately January
5 2008 to November 2014, Respondent Javaherian, while serving as the pharmacist-in-charge of
6 Respondent West Aid Pharmacy, admittedly defrauded Medicare and Medicare drug plan
7 sponsors by paying illegal cash kickbacks to at least 15 Medicare beneficiaries in exchange for
8 their drug prescriptions to be submitted to Respondent West Aid Pharmacy. Respondent
9 Javaherian also submitted false and fraudulent claims to Medicare drug plan sponsors for
10 reimbursement for drugs that he never provided to Medicare beneficiaries. Respondents received
11 approximately \$644,060 in overpayments from Medicare as the result of the fraud scheme.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud, or Deceit)**

14 15. Respondent West Aid Pharmacy and Respondent Javaherian are subject to
15 disciplinary action under sections 4301, subsection (f), and 4302 of the Code, in that they
16 committed acts of dishonesty, fraud, or deceit by admittedly defrauding Medicare and Medicare
17 drug plan sponsors by paying illegal cash kickbacks to Medicare beneficiaries and submitting
18 false and fraudulent claims for reimbursements for drugs that Respondent Javaherian never
19 provided to Medicare beneficiaries. Complainant refers to, and by this reference incorporates, the
20 allegations set forth above in paragraph 14, as though set forth fully herein.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Knowingly made or signed any documents that**

23 **falsely represent the existence or nonexistence of a state of facts)**

24 16. Respondent West Aid Pharmacy and Respondent Javaherian are subject to
25 disciplinary action under sections 4301 and 4302 of the Code, in that they knowingly made and
26 signed documents that falsely represented the existence or nonexistence of a state of facts.
27 Complainant refers to and by this reference incorporates the allegations set forth above in
28 paragraphs 14 and 15, as though set forth fully herein.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 17. Respondent West Aid Pharmacy and Respondent Javaherian are subject to
4 disciplinary action under section 4301 of the Code, in that they committed acts of unprofessional
5 conduct. Complainant refers to and by this reference incorporates the allegations set forth above
6 in paragraphs 14 through 16, as though set forth fully herein.

7 **OTHER MATTERS**

8 18. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
9 PHY 55801 issued to Respondent West Aid Pharmacy while Respondent Javaherian was an
10 officer and owner and had knowledge of or knowingly participated in any conduct for which the
11 licensee was disciplined, Respondent Javaherian shall be prohibited from serving as a manager,
12 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
13 Pharmacy Permit Number PHY 55801 is placed on probation or until Pharmacy Permit Number
14 PHY 55801 is reinstated if it is revoked.

15 **DISCIPLINE CONSIDERATIONS**

16 19. To determine the degree of discipline, Complainant alleges that:

17 a. On or about March 1, 2013, the Board issued Citation No. CI 2011 51939 with
18 \$875 fine to Respondent West Aid Pharmacy for violating section 4104, subdivision (b) of the
19 Code (failure to have written policies and procedures regarding reporting licensee drug theft or
20 impairment as required) and Code of Federal Regulations Title 21, Section 1304.11, subdivision
21 (c) (failure to inventory all its controlled substances as required). The Citation is now final and is
22 incorporated by reference as if fully set forth herein.

23 b. On or about August 30, 2013, the Board issued to Citation No. CI 2012 55558
24 with \$500 fine to Respondent West Aid Pharmacy for violating sections 4081, subdivision (a) and
25 4105 subdivision (a), of the Code (failure to account for all records of acquisition and disposition
26 and the current inventory of all dangerous drugs and devices as required). The Citation is now
27 final and is incorporated by reference as if fully set forth herein.

1 c. On or about May 20, 2015, the Board issued Citation No. CI 2014 62020 with
2 \$1000 fine to Respondent West Aid Pharmacy for violating Health & Safety Code section 11164
3 subdivision (a) (failure to fill out prescription forms adequately for the prescription of controlled
4 substances classified in Schedule II, III, IV, or V drugs) and California Code of Regulations, title
5 16, section 1761, subdivision (a) (dispensed a prescription which contained significant error,
6 omission, irregularity, uncertainty, ambiguity, or alteration without contacting the prescriber to
7 clarify). The Citation is now final and is incorporated by reference as if fully set forth herein.

8 d. On or about March 1, 2013, the Board issued Citation No. CI 2012 55859 with
9 \$875 fine to Respondent Javaherian for violating section 4104 subdivision (b) of the Code (failure
10 to have written policies and procedures regarding reporting Licensee drug theft or impairment as
11 required) and Code of Federal Regulations Title 21, Section 1304.11, subdivision (c) (Failure to
12 inventory all its controlled substance as required). The Citation is now final and is incorporated by
13 reference as if fully set forth herein.

14 e. On or about August 30, 2013, the Board issued Citation No. CI 2013 58088
15 with \$500 fine to Respondent Javaherian for violating sections 4081, subdivision (a), and 4105,
16 subdivision (a) of the Code (failure to account for all records of acquisition and disposition and
17 the current inventory of all dangerous drugs and devices as required). The Citation is now final
18 and is incorporated by reference as if fully set forth herein.

19 f. On or about May 20, 2015, the Board issued Citation No. CI 2014 65489 with
20 \$1,000 fine to Respondent Javaherian for violating Health & Safety Code section 11164
21 subdivision (a) (failure to fill out prescription forms adequately for the prescription of controlled
22 substances classified in Schedule II, III, IV, or V drugs) and California Code of Regulations title
23 16, section 1761, subdivision (a) (dispensed a prescription which contained significant error,
24 omission, irregularity, uncertainty, ambiguity, or alteration without contacting the prescriber to
25 clarify). The Citation is now final and is incorporated by reference as if fully set forth herein.

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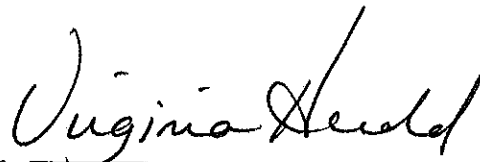
1 PRAYER

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

- 4 1. Revoking or suspending Pharmacy Permit Number PHY 48785, issued to Emoonah,
5 Inc., dba West Aid Pharmacy and Medical Supply;
- 6 2. Revoking or suspending Pharmacist License Number RPH 55801, issued to Rouzbeh
7 Javaherian;
- 8 3. Prohibiting Rouzbeh Javaherian from serving as a manager, administrator, owner,
9 member, officer, director, associate, or partner of a licensee for five years if Pharmacy License
10 No. PHY 48785 issued to Emoonah, Inc., dba West Aid Pharmacy and Medical Supply is placed
11 on probation or until Pharmacy License No. PHY 48785 is reinstated if revoked;
- 12 4. Prohibiting Rouzbeh Javaherian from serving as a manager, administrator, owner,
13 member, officer, director, associate, or partner of a licensee for five years if Registered
14 Pharmacist License No. RPH 55801 issued to him is placed on probation or until Pharmacist
15 License No. RPH 55801 is reinstated if revoked;
- 16 5. Ordering Emoonah, Inc., dba West Aid Pharmacy and Medical Supply and Rouzbeh
17 Javaherian to pay the Board of Pharmacy the reasonable costs of the investigation and
18 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 19 6. Taking such other and further action as deemed necessary and proper.

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21
22 DATED: _____

7/11/17



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

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