

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
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:

- 1 (a) Considering the denial of a license by the board under Section 480; or
- 2 (b) Considering suspension or revocation of a license under Section 490.

3 Each board shall take into account all competent evidence of rehabilitation
4 furnished by the applicant or licensee.

5 8. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or to
8 suspend or revoke a license or otherwise take disciplinary action against a person who
9 holds a license, upon the ground that the applicant or the licensee has been convicted
10 of a crime substantially related to the qualifications, functions, and duties of the
11 licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board
13 may inquire into the circumstances surrounding the commission of the crime in order
14 to fix the degree of discipline or to determine if the conviction is substantially related
15 to the qualifications, functions, and duties of the licensee in question.

12 As used in this section, "license" includes "certificate," "permit," "authority,"
13 and "registration."

13 9. Section 4301 of the Code states:

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

17

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

20

21 (l) The conviction of a crime substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. The record of conviction of a
23 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
24 States Code regulating controlled substances or of a violation of the statutes of this
25 state regulating controlled substances or dangerous drugs shall be conclusive
26 evidence of unprofessional conduct. In all other cases, the record of conviction shall
27 be conclusive evidence only of the fact that the conviction occurred. The board may
28 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.

5

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.

23 ///

24 ///

25 ///

26

27

28

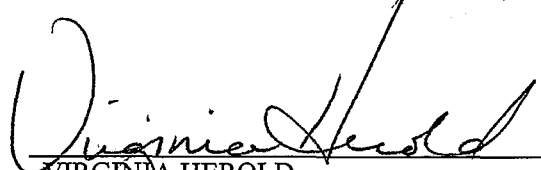
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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