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

In the Matter of the Statement of Issues
Against:

SHADI SABERI

Applicant for Pharmacy Technician License

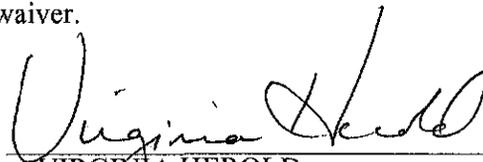
Respondent.

Case No. 4838

**WITHDRAWAL OF
STATEMENT OF ISSUES**

On April 25, 2014, Shadi Saberi (Respondent) withdrew her appeal and request for a hearing of the denial of her application for registration as a pharmacy technician by the Board of Pharmacy. Accordingly, Statement of Issues No. 4838, filed against Respondent, is withdrawn without prejudice and the denial of her application is affirmed. The earliest date on which Respondent may reapply for a pharmacy technician registration is April 25, 2015, which is one year after the date of her withdrawal and waiver.

DATED: 5/8/14



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

SD2013705655

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

12 In the Matter of the Statement of Issues Against:
13 **SHADI SABERI**
14 **Pharmacy Technician Registration Applicant**
15 Respondent.

Case No. 4838

STATEMENT OF ISSUES

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On April 3, 2012, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Shadi Saberi (Respondent).
24 On March 29, 2012, Shadi Saberi certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 March 12, 2013.

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1 **JURISDICTION**

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

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

20

21 6. Section 480 of the Code states:

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

24 (1) Been convicted of a crime. A conviction within the meaning of
25 this section means a plea or verdict of guilty or a conviction following a plea of
26 *nolo contendere*. Any action that a board is permitted to take following the
27 establishment of a conviction may be taken when the time for appeal has elapsed,
28 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 the provisions of section 1203.4 of the Penal Code.

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

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

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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:

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

....

(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

1 crime, in order to fix the degree of discipline or, in the case of a conviction not
2 involving controlled substances or dangerous drugs, to determine if the conviction
3 is of an offense substantially related to the qualifications, functions, and duties of
4 a licensee under this chapter. A plea or verdict of guilty or a conviction following
5 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
6 provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting
8 probation is made suspending the imposition of sentence, irrespective of a
9 subsequent order under section 1203.4 of the Penal Code allowing the person to
10 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
11 the verdict of guilty, or dismissing the accusation, information, or indictment.

12

13 REGULATORY PROVISIONS

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

15 (a) When considering the denial of a facility or personal license under
16 section 480 of the Business and Professions Code, the board, in evaluating the
17 rehabilitation of the applicant and his present eligibility for licensing or
18 registration, will consider the following criteria:

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

21 (2) Evidence of any act(s) committed subsequent to the act(s) or
22 crime(s) under consideration as grounds for denial under section 480 of the
23 Business and Professions Code.

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

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

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

. . . .

11. 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 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(August 13, 2012 Criminal Conviction for Petty Theft on June 6, 2012)**

3 12. Respondent's application for registration as a pharmacy technician is subject to
4 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that she was convicted of a
5 crime that is substantially related to the qualifications, duties, and functions of a registered
6 pharmacy technician, which would also be a ground for discipline for a registered pharmacy
7 technician under Code section 4301, subdivision (1). The circumstances are as follows:

8 a. On August 13, 2012, in a criminal proceeding entitled *The People of the*
9 *State of California vs. Shadi Saberi*, in San Diego County Superior Court, Central Division,
10 Central Courthouse Case Number CD241301, Respondent was convicted for violating Penal
11 Code (PC) sections 484, petty theft, and 28810, subdivision (g)(1), as defined under PC section
12 17, subdivision (b), use of tear gas, not in self-defense, misdemeanors.

13 b. As a result of the conviction, on August 13, 2012, Respondent was granted
14 three years summary probation for each count and sentenced to one day at the San Diego County
15 Jail, with credit for one day actually served. Respondent was also ordered to pay fines,
16 assessments, fees, and restitution, and render 120 hours of volunteer work.

17 c. The facts that led to the conviction are that on June 2, 2012, Respondent
18 took several items from Kohl's Department Store along Mira Mesa Boulevard in San Diego,
19 California. A loss prevention officer who had been monitoring Respondent's movement through
20 the store's closed circuit television intercepted Respondent at the exit. The officer introduced
21 himself to Respondent and requested her to return to the store. Respondent refused, handed over
22 a pair of slacks to the loss prevention officer, and continued walking away. The loss prevention
23 officer continued following Respondent, who was already holding a pepper spray at this time.
24 Respondent took a shirt from her purse and threw it on the ground. When the loss prevention
25 officer closed in on Respondent, she released the chemicals from the pepper spray canister over
26 her shoulder. Respondent then hailed a car and requested the driver to help her. Respondent
27 boarded the car but got out while the car was stopped at an intersection. The driver was later
28 apprised that Respondent took merchandise from a store without paying. The driver then pointed

1 the direction where Respondent fled and identified her upon apprehension by officers of the San
2 Diego Police Department.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,
5 Fraud, Deceit, or Corruption)**

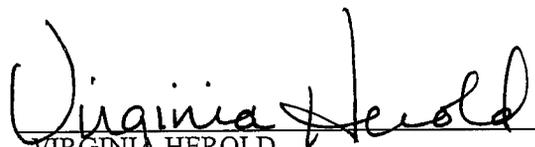
6 13. Respondent's application for registration as a pharmacy technician is subject to
7 denial under Code section 4301, subdivision (f) in that she committed acts which involve moral
8 turpitude, dishonesty, fraud, deceit, and corruption, which would be grounds for discipline for a
9 registered pharmacy technician. Respondent committed theft and used pepper spray not in self-
10 defense but to facilitate her flight from the crime scene, as described in the cause above, which is
11 incorporated by reference.

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. Denying the application of Shadi Saberi for a Pharmacy Technician Registration;
16 2. Taking such other and further action as deemed necessary and proper.

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20 DATED: 3/27/14


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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