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

13
14 In the Matter of the Accusation Against:

Case No. 2354

15 ANDREW GENE MOVCHAN
7642 El Rio Verde Circle
La Palma, CA 90623
16
Pharmacist License No. RPH 42381

**DEFAULT DECISION
AND ORDER**

[Government Code § 11520]

17
18 Respondent.

19 FINDINGS OF FACT

20 1. On or about May 14, 2001, Complainant Patricia F. Harris, in her official
21 capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State
22 of California, filed Accusation No. 2354 against Andrew Gene Movchan ("Respondent") before
23 the Board of Pharmacy ("Board").

24 2. On or about March 9, 1989, the Board of Pharmacy issued Pharmacist
25 License Number RPH 42381 to Respondent. The Pharmacist License was in full force and effect
26 at all times relevant to the charges brought herein and will expire on December 31, 2002, unless
27 renewed.
28

1 3. On or about May 26, 2001, Phyllis Lumpkin, an employee of the
2 Department of Justice, served by First Class Mail a copy of the Accusation No. 2354, Statement
3 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
4 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
5 is 7642 El Rio Verde Circle, La Palma, CA 90623. A copy of the Accusation, the associated
6 supplemental documents and Declaration of Service are attached hereto as "Exhibit A," and they
7 are incorporated as if fully set forth herein.

8 4. The above-described service of the Accusation was effective as a matter of
9 law pursuant to the provisions of Government Code section 11505, subdivision (c).

10 5. Government Code section 11506 states, in pertinent part:

11 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
12 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
13 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
14 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

15 6. Respondent failed to file a Notice of Defense within 15 days after service
16 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
17 Accusation No. 2354.

18 7. California Government Code section 11520 states, in pertinent part:

19 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
20 agency may take action based upon the respondent's express admissions or upon other evidence
21 and affidavits may be used as evidence without any notice to respondent."

22 8. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it, contained in
25 Exhibits A and B, finds that the allegations, and each of them, in Accusation No. 2354 are true.

26 9. The total costs for investigation and enforcement by the Attorney
27 General's Office are \$2,385 as of July 27, 2001.

28

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Andrew Gene
3 Movchan has subjected his Pharmacist License No. RPH 42381 to discipline.

4 2. A copy of the Accusation and the related documents and Declaration of
5 Service are attached hereto.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board is authorized to revoke Respondent's Pharmacist License based
8 upon the following violations alleged in the Accusation:

9 a. Respondent is subject to disciplinary action under section 4300 and
10 its subsections, in that on or about September 15, 2000, in *People of the State of*
11 *California v. Andrew Gene Movchan*, Los Angeles Superior Court Case No. VA05817,
12 Respondent was convicted of the following felony offenses: Cts. I, III, and V - Penal
13 Code section 459 (commercial burglary); and Cts. II and IV - Health and Safety Code
14 section 11350(a) (possession of a controlled substance (Meperidine)).
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22 Attachments:

23 Exhibit A: Accusation, Case No.2354, Associated Supplemental Documents and Declaration
24 of Service.

25 Exhibit B: Declaration of Costs.
26
27

**BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANDREW GENE MOVCHAN
7642 El Rio Verde Circle
La Palma, CA 90623

Pharmacist License No. RPH 42381
Respondent.

Case No. 2354

**DEFAULT DECISION
AND ORDER**

Pharmacist License Number RPH 42381, heretofore issued to Respondent Andrew Gene Movchan, is hereby revoked.

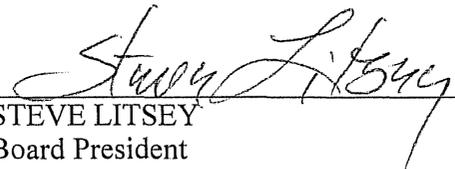
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause, as defined in the statute.

This decision shall become effective on the 3rd day of November, 2001.

It is so ORDERED on October 4, 2001.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

Exhibit A

Accusation, Case No. 2354,
Related Documents and Declaration of Service

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13 **ANDREW GENE MOVCHAN**
14 **7642 El Rio Verde Circle**
La Palma, California 90623

A C C U S A T I O N

15 **Pharmacist License No. RPH 42381**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about March 9, 1989, the Board of Pharmacy issued Original
24 Pharmacist License Number RPH 42381 to Andrew Gene Movchan, RPh ("Respondent"). The
25 license is current, and expires on December 31, 2002.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy ("Board"),
28 under the authority of the following sections of the Business and Professions Code ("Code").

1 4. Section 4300 of the Code states in pertinent part:

2 "(a) Every license issued may be suspended or revoked.

3 "(b) The board shall discipline the holder of any license issued by the
4 board, whose default has been entered or whose case has been heard by the board and
5 found guilty, by any of the following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one
9 year.

10 "(4) Revoking his or her license.

11 "(5) Taking any other action in relation to disciplining him or her as the
12 board in its discretion may deem proper.

13

14 "(e) The proceedings under this article shall be conducted in accordance
15 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
16 Government Code, and the board shall have all the powers granted therein. The action
17 shall be final, except that the propriety of the action is subject to review by the superior
18 court pursuant to Section 1094.5 of the Code of Civil Procedure."

19 5. Section 4301 of the Code states in pertinent part:

20 "The Board shall take action against any holder of a license who is guilty
21 of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any
22 of the following:

23 ". . . .

24 "(l) The conviction of a crime substantially related to the qualifications,
25 functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of
26 the Business and Professions Code. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating
28 controlled substances or of a violation of the statutes of this state regulating controlled

1 substances or dangerous drugs shall be conclusive evidence of unprofessional conduct.
2 In all other cases, the record of conviction shall be conclusive evidence only of the fact
3 that the conviction occurred. The board may inquire into the circumstances surrounding
4 the commission of the crime, in order to fix the degree of discipline or, in the case of a
5 conviction not involving controlled substances or dangerous drugs, to determine if the
6 conviction is of an offense substantially related to the qualifications, functions, and duties
7 of a licensee under Chapter 9 (commencing with Section 4000) of the Business and
8 Professions Code. A plea or verdict of guilty or a conviction following a plea of nolo
9 contendere is deemed to be a conviction within the meaning of this provision. The board
10 may take action when the time for appeal has elapsed, or the judgment of conviction has
11 been affirmed on appeal or when an order granting probation is made suspending the
12 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
13 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
14 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
15 or indictment."

16 6. Section 490 of the Code states:

17 "A board may suspend or revoke a license on the ground that the licensee
18 has been convicted of a crime, if the crime is substantially related to the qualifications,
19 functions, or duties of the business or profession for which the license was issued. A
20 conviction within the meaning of this section means a plea or verdict of guilty or a
21 conviction following a plea of nolo contendere. Any action which a board is permitted to
22 take following the establishment of a conviction may be taken when the time for appeal
23 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
24 granting probation is made suspending the imposition of sentence, irrespective of a
25 subsequent order under the provisions of Section 1203.4 of the Penal Code."

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1 7. Section 493 of the Code states:

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

12 "As used in this section, 'license' includes 'certificate,' 'permit,'
13 'authority,' and 'registration.'" Title 16, California Code of Regulations, section 1770
14 states that for the purpose of denial, suspension, or revocation of a personal or facility
15 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
16 Professions Code, a crime or act shall be considered substantially related to the
17 qualifications, functions or duties of a licensee or registrant if to a substantial degree it
18 evidences present or potential unfitness of a licensee or registrant to perform the
19 functions authorized by his license or registration in a manner consistent with the public
20 health, safety, or welfare."

21 8. Section 4022 of the Code states in pertinent part:

22 "'Dangerous drug' . . . means any drug . . . unsafe for self-use, except
23 veterinary drugs that are labeled as such, and includes the following:

24 "(a) Any drug that bears the legend: 'Caution: federal law prohibits
25 without prescription,' 'Rx only,' or words of similar import.

26 ". . .

27 "(c) Any other drug or device that be federal or state law can be lawfully
28 dispensed only on prescription . . ."

