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

10 In the Matter of the Accusation Against:

Case No. 3881

11 **AMIR JOHN MALEKSHOAR**
12 **10265 Bret Avenue**
13 **Cupertino, CA 95014**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician License No. TCH 88255

14 Respondent.

15 FINDINGS OF FACT

16 1. On or about May 27, 2011, Complainant Virginia Herold, in her official capacity as
17 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
18 No. 3881 against Amir John Malekshoar (Respondent) before the Board of Pharmacy. A copy of
19 the Accusation is attached as exhibit A.

20 2. On or about December 22, 2008, the Board of Pharmacy (Board) issued Pharmacy
21 Technician License No. TCH 88255 to Respondent. The Pharmacy Technician License was in
22 full force and effect at all times relevant to the charges brought in Accusation No. 3881 and will
23 expire on May 31, 2012, unless renewed.

24 3. On or about June 6, 2011, Respondent was served by Certified and First Class Mail
25 with copies of: Accusation No. 3879; a Statement to Respondent, a Notice of Defense (2 copies);
26 a Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at
27 Respondent's address of record, which was and is: 10265 Bret Avenue, Cupertino, CA 95014.

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1 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
2 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
3 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

4 5. Service of the Accusation was effective as a matter of law under Government Code
5 section 11505, subdivision (c) and/or Business and Professions Code section 124.

6 6. Government Code section 11506 states, in pertinent part:

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

10 7. Respondent failed to file a Notice of Defense within 15 days after service on him of
11 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3881.

12 8. California Government Code section 11520 states, in pertinent part:

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

16 9. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
19 as well as taking official notice of all the investigatory reports, exhibits and statements contained
20 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3881,
21 finds that the charges and allegations in Accusation No. 3881 are, separately and severally, found
22 to be true and correct by clear and convincing evidence.

23 10. Taking official notice of its own internal records, it is hereby determined that the
24 reasonable costs for Investigation and Enforcement pursuant to Business and Professions Code
25 section 125.3, are \$1,690.00 as of August 11, 2011.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Amir John Malekshoar has
28 subjected his Pharmacy Technician License No. TCH 88255 to discipline.

1 2. The agency has jurisdiction to adjudicate this case by default.

2 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
3 License based upon the following violations alleged in the Accusation which are supported by the
4 evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

5 a. In violation of Business and Professions Code section 4301(f), Respondent did the
6 following acts involving moral turpitude, dishonesty, fraud, deceit, or corruption: In or about
7 February 2010, Respondent stole/diverted a bottle containing a cough syrup with **codeine** from a
8 CVS Pharmacy in San Jose, CA by which he was employed, with the intention to sell the drug;

9 b. In violation of Business and Professions Code section(s) 4301(l) and/or 490, by
10 reference to California Code of Regulations, title 16, section 1770, Respondent was convicted of
11 a substantially related crime. Based on the acts described above, on or about August 30, 2010, in
12 *People v. Amir John Melekshoar*, Case No. C1072969 in Santa Clara County Superior Court,
13 Respondent was convicted of violating Business and Professions Code section 4060 (Possession
14 of Controlled Substance Without Prescription), a misdemeanor;

15 c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059,
16 Respondent, as described above, furnished to himself or another without a valid prescription,
17 and/or conspired, assisted or abetted furnishing of, a controlled substance, without a prescription;

18 d. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,
19 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,
20 conspired, assisted in or abetted possession of, a controlled substance, without a prescription;

21 e. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
22 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to
23 obtain and/or assisted in or abetted obtaining of, a controlled substance by fraud, deceit,
24 subterfuge, or concealment of a material fact;

25 f. In violation of Business and Professions Code section 4301, Respondent, as described
26 above, engaged in unprofessional conduct.

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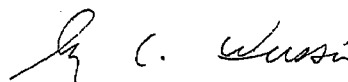
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 88255, heretofore issued to Respondent Amir John Malekshoar, is 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 November 23, 2011.

It is so ORDERED October 24, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

20505526.DOC
DOJ Matter ID:SF2010202869

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

10 In the Matter of the Accusation Against:
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12 **AMIR JOHN MALEKSHOAR**
10265 Bret Avenue
Cupertino, CA 95014
13
14 **Pharmacy Technician License No. TCH 88255**
15 Respondent.

Case No. 3881

A C C U S A T I O N

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about December 22, 2008, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 88255 to Amir John Malekshoar (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on May 31, 2012, unless renewed.

24 JURISDICTION

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

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1 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

4 8. California Code of Regulations, title 16, section 1770, states:

5 “For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by her license or registration in a
10 manner consistent with the public health, safety, or welfare.”

11 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished upon a valid prescription/drug order.

15 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
18 or subterfuge; or (2) by the concealment of a material fact.

19 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
20 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
21 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

22 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation of the licensing
24 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

25 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26 14. Section 4021 of the Code states:

27 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
28 11053) of Division 10 of the Health and Safety Code.”

1 15. Section 4022 of the Code states, in pertinent part:

2 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
3 except veterinary drugs that are labeled as such, and includes the following:

4 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
5 prescription,’ ‘Rx only,’ or words of similar import.

6 ...

7 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
8 prescription or furnished pursuant to Section 4006.”

9 16. Depending on the strength, concentration, and/or compound(s) in which it appears,
10 **Codeine** is a Schedule III and/or Schedule V controlled substance as designated by Health and
11 Safety Code sections 11056(e) and 11058(c), and a dangerous drug as designated by Business and
12 Professions Code section 4022. It is a narcotic drug.

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FACTUAL BACKGROUND

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17 17. In or about February 2010, Respondent was employed at a CVS Pharmacy (PHY
18 49696) located in San Jose, CA.

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22 18. On or about February 7, 2010, Respondent was a passenger in an automobile that was
23 the subject of a traffic stop conducted by officer(s) of the San Jose Police Department. A search
24 of the vehicle discovered a plastic bottle containing a cough syrup with **codeine**, a Schedule V
25 controlled substance, under the seat occupied by Respondent. Respondent admitted that he stole
26 the bottle from his workplace with the intention of selling the contents.

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FIRST CAUSE FOR DISCIPLINE

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(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

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28 19. Respondent is subject to discipline under section 4301(f) of the Code in that
Respondent, as described in paragraph 18 above, committed acts involving moral turpitude,
dishonesty, fraud, deceit, or corruption.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession
6 of, a controlled substance, without a prescription.

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8 FIFTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraph 18
12 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled
13 substance, by fraud, deceit, subterfuge, or concealment of material fact.

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15 SIXTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

17 24. Respondent is subject to discipline under section 4301 of the Code in that
18 Respondent, as described in paragraphs 18 to 23 above, engaged in unprofessional conduct.

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22 PRAYER

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


25 1. Revoking or suspending Pharmacy Technician License Number TCH 88255, issued
26 to Amir John Malekshoar (Respondent);

27 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as is deemed necessary and proper.

DATED: 5/27/11


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

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