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

In the Matter of the Accusation Against:

KARINE TADEVOSYAN 420 Riverdale Dr. #7 Glendale, CA 91204

Pharmacy Technician Registration No. TCH 24103 Case No. 4058

OAH No. 2013070547

Respondent.

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 18, 2014.

It is so ORDERED on January 17, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN C. WEISSER Board President

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In the Matter of the Accusation Against:

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Respondent.

PROPOSED DECISION

This matter came on regularly for hearing on December 3, 2013, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Morgan Malek, Deputy Attorney General.

Karine Tadevosyan (Respondent) was present and was represented by John D. Bishop, Attorney at Law.

At the outset of the hearing, Complainant amended the Accusation at page 4, lines 18-19, to change "one" to "six" and to change "count" to "counts" on both lines.

Documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On October 22, 1997, the Board issued Pharmacy Technician Registration No. TCH 24103 to Respondent. The license was in full force and effect at all relevant times. It will expire on October 31, 2015, unless renewed.

3. On December 12, 2005, in the Superior Court of California, County of Los Angeles, in Case No. 5GL04963, Respondent pled nolo contendere and was convicted of violating Penal Code section 484, subdivision (a) (theft), a misdemeanor substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

4. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including incarceration in the Los Angeles County Jail for one day with credit for one day, payment of fines and assessments totaling \$1,079, and a prohibition against being within 100 yards of the Glendale Galleria and J.C. Penney Department Store.

5. The facts and circumstances underlying the conviction are that Respondent shoplifted a bracelet from a J.C. Penney Department Store.¹ At the time of her arrest, Respondent was also in possession of other merchandise from other department stores. She did not have receipts for those items. However, Complainant did not prove that Respondent had stolen those items.

6. On October 20, 2009, in the Superior Court of California, County of Los Angeles, in Case No. 9PY03257, Respondent pled nolo contendere and was convicted of violating Penal Code section 666-484 (petty theft with priors), a misdemeanor substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770. Respondent had been off probation for less than one year when she suffered her second conviction.

7. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including incarceration in the Los Angeles County Jail for one day with credit for one day, payment of fines, fees and assessments totaling \$182, and a prohibition against being within 100 yards of Bloomingdales in Sherman Oaks, California.

8. The facts and circumstances underlying the conviction are that Respondent shoplifted merchandise from a Bloomingdale's Department Store.

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¹ Complainant alleged in the Accusation that Respondent stole more than one bracelet from the store. Respondent claimed she stole only one bracelet. The allegation of more than one bracelet was not proven. However, it is the fact of the theft rather than the number of bracelets stolen that creates cause for discipline. Although the number of items stolen could be viewed as a factor in aggravation and could possibly affect the nature and/or extent of the discipline imposed, other facts referenced below are more dispositive on those issues.

9. On November 5, 2010, in the Superior Court of California, County of Los Angeles, in Case No. GA080189, Respondent pled nolo contendere and was convicted of violating six counts of Penal Code section 484E, subdivision (d) (grand theft-using access account information without consent), felonies substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770. Respondent suffered those convictions less than 11 months after her 2009 conviction, and she was still on probation from the 2009 conviction.

10. Respondent was placed on formal probation for a period of three years under various terms and conditions including incarceration in the Los Angeles County Jail for one day with credit for one day, payment of assessments and restitution in the sum of \$270, performance of 45 days of work crew service, and a prohibition against possessing a credit card, credit account or check unless it was in her true name. On September 27, 2013, the court reduced the felonies to misdemeanors, set aside Respondent's plea, entered a plea of not guilty, and dismissed the case pursuant to Penal Code section 1203.4.

11. The facts and circumstances underlying the conviction arose in connection with a credit card re-encoding scheme in which Respondent's former boyfriend was involved. He offered Respondent several credit cards that had been re-encoded with victims' identifying information, and he told Respondent she could use the cards without getting a bill. Some of the cards were in Respondent's name; others were not. Respondent's boyfriend did not require her to accept the fraudulent credit cards. Respondent accepted them on her own volition. Her crime was discovered when members of the Eurasian Organized Crime Task Force raided her boyfriend's home in connection with his cultivation of marijuana. Respondent was in the home at the time of the raid. Task Force officers found re-encoded credit cards in Respondent's purse and car.

12. Respondent is 56 years old. Born in Iran and raised in Armenia, she immigrated to the United States in 1990. Although she was separated from her husband of three years at that time, they came to the United States together to pursue her husband's idea of reconciliation in a new country. Respondent remained with her husband for the following 17 years, but he remained verbally and physically abusive toward her throughout their 20year marriage.

13. Respondent accepts responsibility for her crimes. She attributes her criminal activity to depression and low self-esteem borne of her abusive marriage. Her depression and low self-image continued beyond the time of her divorce. During her marriage, she began frequenting large shopping malls to avoid being home with her husband. In so doing, she developed an attraction for high-end merchandise she viewed on attractive displays in store windows. Respondent believes that attraction led to a compulsion to take those items without paying for them. Respondent testified that she was on medication at the time of her theft crimes, and that she was not thinking clearly. However, she did not offer any evidence of altered mentation as a side effect of any of the medications she was taking at the times she committed her crimes.

14. Respondent's involvement with the credit card scheme did not involve the compulsion she felt in connection with her shoplifting crimes but, as with the shoplifting crimes, her possession and use of the re-encoded credit cards was a crime of opportunity. At the administrative hearing, Respondent admitted that, had she not been caught, she would have continued to use the re-encoded credit cards with full knowledge that they were fraudulent.

15. Respondent offered into evidence a Psychological Diagnostic Evaluation Report by Nora Chitilian, M.S., L.M.F.T. dated June 12, 2013. That report was admitted as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). The only mention Ms. Chitilian makes of Respondent's abusive marriage is limited to the following two sentences: "Karine has been in an abusive relationship and marriage until her divorce about 7 years ago. She has been a victim of domestic violence." (Exhibit D.) Although Ms. Chitilian cites as a chief complaint Respondent's depression and anxiety over her then-current "legal situation," (*Id.*) she did not connect Respondent's crimes to her depression or to her former marriage. Instead, she diagnosed Respondent with Kleptomania, Major Depressive Disorder, and Post-Traumatic Stress Disorder. Ms. Chitilian provided psychotherapy to Respondent for three months. Although Respondent to be "well oriented to therapist, time and places" (*Id.*) with no known hallucinations.

16. At the administrative hearing, Respondent testified that she has turned her life around. She is engaged to a man more responsible and kind than her abusive former husband and her conniving former boyfriend. She enjoys her life and her family, and she averred that she will never re-offend.

17. Respondent's testimony in that regard was belied by her admission that, less than three years ago, she obtained her current job as a pharmacy technician by failing to disclose to her employer that she had been convicted of any crimes, even though she remembered all three of her convictions. She admitted that her reason for not disclosing her convictions now is that she wants to keep her job. She testified that, if she is placed on probation, she will disclose her convictions to her employer because she will have to.

18. Respondent offered letters from several individuals, mostly family members, and the testimony of her fiancé, all of whom claim that she is a fine, caring, loving, and trustworthy individual. Respondent's fiancé and the letters' authors are aware of Respondent's convictions. Significantly, there were no appearances or letters by or from her employer or co-workers. Respondent's character references are given little weight because of Respondent's close relationships with the witnesses. Respondent victimized strangers, not family and friends. There was little the witnesses could offer to show Respondent's honesty at work or in the community, or an unlikelihood of recidivism.

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19. Complainant offered the testimony of Board-investigator Sejal Desai who testified in the capacity of an expert witness. Ms. Desai did not investigate any aspect of the instant case. She testified that a licensee with a history of credit card fraud is more likely to re-offend than an individual without such a history. Upon further questioning, Ms. Desai stated that it was only possible, but not necessarily probable, that such an individual would re-offend. Upon additional questioning, she returned to her initial answer. Ms. Desai cited to her experience as an investigator as the basis of her opinion. However, she admitted that she had investigated only one case in which the licensee had a history of credit card fraud, and she had received no training in the likelihood of recidivism. Ms. Desai's equivocal testimony, based on her extremely limited experience, is not worthy of any weight as expert testimony. However, Ms. Desai was credible in her testimony that pharmacy technicians have ready access to customers' medical information, personal identification information and credit card information.

20. Respondent denies still having an urge to steal. However, as a method of avoiding temptation, she no longer frequents large shopping malls. She periodically sees a psychiatrist who adjusts her medications.

21. The Board incurred costs, including attorney fees, in the total sum of \$9,437.50, in connection with the investigation and prosecution of this action. Those costs are found to be just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacy technician license pursuant to Business and Professions Code^2 sections 490, 4300, and 4301, subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, for conviction of substantially related crimes, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11.

2. Cause exists to discipline Respondent's pharmacy technician license pursuant to Code sections 4300 and 4301, subdivision (f), for acts involving moral turpitude, dishonesty, fraud, deceit and/or corruption, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14.

3. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 21.

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² All statutory references are to the Business and Professions Code unless otherwise indicated.

4. Respondent argued in closing argument that license revocation in this case is overly harsh given that she has turned her life around, become engaged to a decent man, and has been steadily employed at the same pharmacy for approximately three years without any incident involving dishonesty. Respondent is incorrect. Her incident of dishonesty in connection with her employer occurred immediately before securing her job when she knowingly and intentionally failed to disclose her eight convictions on her employment application. Her dishonesty has extended to this day by her continuing to hide those convictions and refusing to disclose them because she is afraid disclosure will cost her the job. She has done so apparently without regard to the effect of her non-disclosure on her employer and the members of the public who do business with the pharmacy. Even in urging probation instead of license revocation, Respondent conceded that she would disclose her convictions to her employer, but only because she would have to.

5. Further, Respondent's crimes were crimes of opportunity and, as demonstrated below, she has offered little by way of rehabilitation. Therefore, one cannot determine whether she has not re-offended since she accepted her present job because she has changed her life, or because the opportunity to re-offend has not presented itself.

6. The Board has established guidelines for assessing rehabilitation in connection with determining license discipline for a licensee. California Code of Regulations, title 16, section 1769, subdivision (b) states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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

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7. Although the value of the shoplifted merchandise was limited, Respondent's misdemeanor theft crimes were serious in that they demonstrated a willingness to deceive and a penchant for dishonesty when an opportunity to advance her personal interests by dishonest means presented itself. Her crime in connection with the re-encoded credit card scheme was extremely serious in that it involved victimizing individuals through the theft of their personal information and placing them into a position of having to pay for purchases they did not make. Although Respondent was not involved in that aspect of the scheme, she readily accepted its benefits, again taking advantage of an opportunity enabled by her penchant for dishonesty. (Criterion 1.) Respondent was convicted of two misdemeanor crimes and six felony crimes in an approximate five-year period. (Criterion 2.) Approximately 3.5 years have passed since Respondent was arrested for her most recent crimes. (Criterion 3.) Respondent has complied with the terms of probation, and her most recent conviction has been dismissed. (Criterion 4.) However, her evidence of rehabilitation is limited to medication and a new attitude based largely on her present relationship with her fiancé and other family members. (Criterion 5.) Respondent's crimes were crimes of opportunity. Similar opportunities can arise at any time. Without something more than medication, close family ties and an avoidance of large shopping malls to eschew temptation, the public health, safety, welfare and interest cannot be adequately protected if Respondent is permitted to retain her license.

ORDER

1. Pharmacy technician license number TCH 24103, issued to Respondent, Karine Tadevosyan, is revoked. Respondent shall relinquish her technician license to the Board within ten days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of her revoked technician license for three years from the effective date of this decision.

2. A condition of reinstatement shall be that Respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the Board.

3. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$9,437.50 within 15 days of the effective date of this decision.

Dated: December 13, 2013

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H. STUART WAXMAN / Administrative Law Judge Office of Administrative Hearings

1 2 3	KAMALA D. HARRIS Attorney General of California MARC D. GREENBAUM Supervising Deputy Attorney General MORGAN MALEK Deputy Attorney General
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7	Attorneys for Complainant
8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 4058
12	KARINE TADEVOSYAN 420 Riverdale Drive, #7
13	Glendale, CA 91204 A C C U S A T I O N
14	Pharmacy Technician Registration No. TCH 24103
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16	Respondent.
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21	Complainant alleges:
22	PARTIES
23	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
25	2. On or about October 22, 1997, the Board issued Pharmacy Technician License No.
26	TCH 24103 to Karine Tadevosyan (Respondent). The Pharmacy Technician License was in full
27	force and effect at all times relevant to the charges brought herein and will expire on October 31,
28	2013, unless renewed.
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JURISDICTION 1 3. This Accusation is brought before the Board, under the authority of the following 2 laws. All section references are to the Business and Professions Code unless otherwise indicated. 3 STATUTORY PROVISIONS 4 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or 5 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary 6 action during the period within which the license may be renewed, restored, reissued or 7 reinstated. 8 5. Section 490 states: 9 "(a) In addition to any other action that a board is permitted to take against a licensee, a 10 board may suspend or revoke a license on the ground that the licensee has been convicted of a 11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business 12 or profession for which the license was issued. 13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to 14 discipline a licensee for conviction of a crime that is independent of the authority granted under 15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties 16 17 of the business or profession for which the licensee's license was issued. "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a 18 19 conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or 2021 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 22 provisions of Section 1203.4 of the Penal Code." 23 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or 24 revoked." 25 7. Section 4301 states, in pertinent part: 26 27 "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. 28

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.

"(1) The conviction of a crime substantially related to the qualifications, functions, and 7 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 8 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 9 substances or of a violation of the statutes of this state regulating controlled substances or 10 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 11 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 12 13 The board may 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 14 15 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 16 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 17 of this provision. The board may take action when the time for appeal has elapsed, or the 18 judgment of conviction has been affirmed on appeal or when an order granting probation is made 19 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of 20the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 21 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 22 indictment...." 23

REGULATORY PROVISION

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

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

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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."

COST RECOVERY

9. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially-Related Crimes)

10. Respondent is subject to disciplinary action under section 490, 4300 and 4301, 11 subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the 12 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially 13 related to the qualifications, functions or duties of a registered pharmacy technician which to a 14 substantial degree evidence her present or potential unfitness to perform the functions authorized 15 by her registration in a manner consistent with the public health, safety, or welfare, as follows: 16 On or about November 05, 2010, after pleading nolo contendere, Respondent was .17 a. convicted of one felony count of violating Penal Code section 484E, subdivision (d) [grand theft-18 using access account information without consent]; and one felony count of violating Penal Code 19 section 484E, subdivision (d) [grand theft-using access account information without consent], in 20 the criminal proceeding entitled The People of the State of California v. Karine Tadevosian 21 (Super. Ct. Los Angeles County, 2010, No. GA080189). The court sentenced Respondent to 1 22 day in jail, placed her on probation for a period of 3 years, and fined her. The circumstances 23 surrounding the conviction are that on or about May 13, 2010, Burbank Police Officers assisted 24 with a federal search and arrest warrant at a property located in Burbank, California. The warrant 25 was to search for items connected to the cultivation and distribution of marijuana. At the property 26 located in Burbank, California, Respondent was identified as an individual in the property and 27 28 was detained by the officers. Respondent gave the officers permission to search her vehicle that

was parked outside on the street at the location. During the search, the officers recovered several
credit cards in the center of the console of the vehicle. The cards had variations of name
spellings, and handwritten numbers on the signature panels. The officer verified through the
credit card reader that all the credit cards recovered from Respondent's vehicle were not valid.
The officer also verified that two of the credit cards recovered from Respondent's purse were not
valid as well. Respondent was subsequently arrested for violating Penal Code section 484E,
subdivision (d).

b. On or about November 17, 2009, after pleading nolo contendere, Respondent was 8 9 convicted of one misdemeanor count of violating Penal Code section 666/484 [petty theft: with priors], in the criminal proceeding entitled The People of the State of California v. Karine 10 Tadevosian (Super. Ct. Los Angeles County, 2009, No. 9PY03257). The court sentenced 11 Respondent to 1 day in jail, placed her on probation for a period of 36 months, and fined her. The 12 13 circumstances surrounding the conviction are that on or about May 15, 2009, the Bloomingdale's Department Loss Prevention Agent's observed Respondent concealing merchandise in her 14 shopping bag, while in the department store. Respondent exited the store without paying for the 15 merchandise. Respondent admitted to the officers that she took the merchandise and stated to 16 them that, "it's a stupid thing." Respondent was subsequently arrested for violating Penal Code 17 section 666/484. 18

On or about December 12, 2005, after pleading nolo contendere, Respondent was 19 c. convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft], 20in the criminal proceeding entitled The People of the State of California v. Karine Tadevosian 21 (Super. Ct. Los Angeles County, 2005, No. 5GL04963). The court sentenced Respondent to 1 22 day in jail, placed her on probation for a period of 36 months, and fined her. The circumstances 23 surrounding the conviction are that on or about September 29, 2005, Respondent was observed by 24 25JC Penney Loss Prevention Agent placing bracelets inside a shopping bag already containing merchandise. Respondent left the JC Penney department store without paying for the bracelets. 26 27 The agent recovered the missing bracelets from inside one of the bags Respondent had carried out 28 of the store. Respondent admitted to the agent that she had selected and stole the bracelets from

1	JC Penney department store. The Respondent was also in possession of other clothing items from	
2	other department stores in the value amount of approximately \$830.60 without current receipts or	
3	tags. Respondent was subsequently convicted of violating Penal Code section 484, subdivision	
4	(a) [theft].	
5	SECOND CAUSE FOR DISCIPLINE	
6	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)	ļ
7	11. Respondent is subject to disciplinary action under sections 4300 and 4301,	
8	subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts	
9	involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to,	
10	and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs	
11	(a) through (c), inclusive, as though set forth fully.	
12	<u>PRAYER</u>	ĺ
13	WHEREFORE, Complainant requests that a hearing be held on the matters hereinalleged,	
14	and that following the hearing, the Board issue a decision:	
15	1. Revoking or suspending Pharmacy Technician License No. TCH 24103, issued to	
16	Karine Tadevosyan;	1998 1998 1998
17	2. Ordering Karine Tadevosyan to pay the Board the reasonable costs of the	1. 10. 10. 10. 10. 10. 10. 10. 10. 10. 1
18	investigation and enforcement of this case, pursuant to section 125.3; and	
. 19	3. Taking such other and further action as deemed necessary and proper.	
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21	DATED: $2/12/13$ ()individe the off	
22	VIRGINIA HEROLD Executive Officer	
23	Board of Pharmacy Department of Consumer Affairs	
24	State of California Complainant	
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