

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

In the Matter of the Accusation Against:

ARASH SHAFIHI
5963 Eldergardens Street
San Diego, CA 92120

Pharmacy Technician Registration No. TCH
114951

Respondent.

Case No. 4350

OAH No. 2012090109

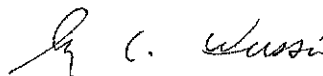
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 11, 2013.

It is so ORDERED on December 12, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Attorney General of California
2 LINDA K. SCHNEIDER
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4350

12 **ARASH SHAFTHIE**
13 **5963 Eldergardens Street**
14 **San Diego, CA 92120**

OAH No. 2012090109

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Pharmacy Technician Registration No. TCH**
16 **114951**

17 Respondent.

18
19 In the interest of a prompt and speedy resolution of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
21 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
22 submitted to the Board for approval and adoption as the final disposition of the Accusation.

23 **PARTIES**

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
27 General.

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 4350, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
4 Registration No. TCH 114951 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Pharmacy Technician Registration without further process.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
9 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
10 communicate directly with the Board regarding this stipulation and surrender, without notice to or
11 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
12 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
13 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
14 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
16 be disqualified from further action by having considered this matter.

17 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
18 License and Order, including facsimile signatures thereto, shall have the same force and effect as
19 the originals.

20 12. This Stipulated Surrender of License and Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
24 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
25 executed by an authorized representative of each of the parties.

26 13. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

1
2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 114951,
3 issued to Respondent Arash Shafihie, is surrendered and accepted by the Board of Pharmacy.

4 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
5 of the surrendered license by the Board shall constitute the imposition of discipline against
6 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
7 Respondent's license history with the Board of Pharmacy.

8 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
9 as of the effective date of the Board's Decision and Order.

10 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
11 issued, his wall certificate on or before the effective date of the Decision and Order.

12 4. If Respondent ever files an application for licensure or a petition for reinstatement in
13 the State of California, the Board shall treat it as new application for licensure. Respondent must
14 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
15 effect at the time the petition is filed, and all of the charges and allegations contained in
16 Accusation No. 4350 shall be deemed to be true, correct and admitted by Respondent when the
17 Board determines whether to grant or deny the petition.

18 5. Respondent shall pay the agency its costs of investigation and enforcement in the
19 amount of \$782.50 prior to issuance of a new or reinstated license.

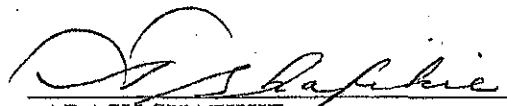
20 6. Respondent may not apply for any license, permit, or registration from the board for
21 three (3) years from the effective date of this decision. Respondent stipulates that should he or she
22 apply for any license from the board on or after the effective date of this decision, all allegations
23 set forth in the (accusation or petition to revoke probation) shall be deemed to be true, correct and
24 admitted by respondent when the board determines whether to grant or deny the application.

25 Respondent shall satisfy all requirements applicable to that license as of the date the application
26 is submitted to the board, including, but not limited to certification by a nationally recognized
27 body prior to the issuance of a new license. Respondent is required to report this surrender as
28 disciplinary action.

1 7. If Respondent should ever apply or reapply for a new license or certification, or
2 petition for reinstatement of a license, by any other health care licensing agency in the State of
3 California, all of the charges and allegations contained in Accusation, No. 4350 shall be deemed
4 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
5 other proceeding seeking to deny or restrict licensure.

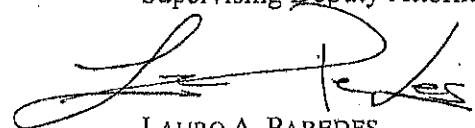
6 **ACCEPTANCE**

7 I have carefully read the Stipulated Surrender of License and Order. I understand the
8 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
9 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
10 be bound by the Decision and Order of the Board of Pharmacy.

11
12 DATED: 11/13/2012 
13 ARASH SHAFIQIE
14 Respondent

15 **ENDORSEMENT**

16 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
17 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

18 Dated: Respectfully submitted,
19 KAMALA D. HARRIS
20 Attorney General of California
21 LINDA K. SCHNEIDER
22 Supervising Deputy Attorney General
23 
24 LAURO A. PAREDES
25 Deputy Attorney General
26 Attorneys for Complainant

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28

Exhibit A

Accusation No. 4350

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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
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Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
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12 In the Matter of the Accusation Against:

Case No. 4350

13 **ARASH SHAFIHIE**
14 **5963 Eldergardens Street,**
San Diego, CA 92120

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 114951**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 1, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 114951 to Arash Shafihie (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on March 31, 2013, unless renewed.

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JURISDICTION

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

15 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
16 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
17 disciplinary action during the period within which the license may be renewed, restored, reissued
18 or reinstated.

19 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
20 suspended or revoked."

STATUTORY PROVISIONS

21 6. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to evaluate
23 the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480; or

25 (b) Considering suspension or revocation of a license under Section 490.

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

28 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
revoke a license on the ground that the licensee has been convicted of a crime substantially
related to the qualifications, functions, or duties of the business or profession for which the
license was issued.

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.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4022 of the Code states

4 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
5 self-use in humans or animals, and includes the following:

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

8 (b) Any device that bears the statement: "Caution: federal law restricts this
9 device to sale by or on the order of a _____," "Rx only," or words of similar
10 import, the blank to be filled in with the designation of the practitioner licensed to use
11 or order use of the device.

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

14 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
15 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
17 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

19 11. Section 4060 of the Code states, in pertinent part, that no person shall possess any
20 controlled substance, except that furnished to a person upon the prescription of a physician,
21 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

22 12. Section 4301 of the Code states:

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

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 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.

(j) The violation of any of the statutes of this state, or any other state, or of the
United States regulating controlled substances and dangerous drugs.

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(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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 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 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

....

13. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally --

....

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

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1 **REGULATORY PROVISIONS**

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

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4 (b) When considering the suspension or revocation of a facility or a personal
5 license on the ground that the licensee or the registrant has been convicted of a crime,

6 the board, in evaluating the rehabilitation of such person and his present eligibility for
7 a license will consider the following criteria:

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

9 (2) Total criminal record.

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

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

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

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

15 For the purpose of denial, suspension, or revocation of a personal or facility
16 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
17 Professions Code, a crime or act shall be considered substantially related to the
18 qualifications, functions or duties of a licensee or registrant if to a substantial degree
19 it evidences present or potential unfitness of a licensee or registrant to perform the
20 functions authorized by his license or registration in a manner consistent with the
21 public health, safety, or welfare.

18 **COST RECOVERY**

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

23 **DRUG**

24 17. Adderall, known generically as dextroamphetamine, is a Schedule II controlled
25 substance as designated by Health and Safety Code section 11055, subdivision (d)(1), and is a
26 dangerous drug pursuant to Business and Professions Code section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (April 25, 2012 Criminal Conviction for Prescription Fraud)

3 18. Respondent has subjected his registration to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
5 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

6 a. On or about April 25, 2012, in a criminal proceeding entitled *People of the*
7 *State of California v. Arash Shafihie*, San Diego County Superior Court, case number CD238986,
8 Respondent was convicted on his plea of guilty to violating Health and Safety Code section
9 11173, subdivision (a), obtaining a prescription by fraud/deceit, to wit, Adderall, a felony. The
10 court dismissed an additional count of violating Health and Safety Code section 11173,
11 subdivision (a), and two counts of burglary (Pen. Code, § 459), pursuant to a plea agreement.

12 b. As a result of the conviction, on or about April 25, 2012, Respondent was
13 sentenced to eight days in jail, with credit for eight days, and granted three years court-supervised
14 probation. Respondent was further ordered to perform 15 days of public service, attend and
15 successfully complete a substance abuse counseling program, attend self-help meetings and
16 complete a program of residential treatment if directed by the court, pay fees and fines in the
17 amount of \$1,264, and comply with the terms of felony probation.

18 c. The facts that led to the conviction are that on or about January 18, 2012, a
19 Drug Enforcement Administration (DEA) Special Agent met with a pharmacist at a San Diego
20 CVS Pharmacy regarding her report of prescription fraud. The pharmacist provided the Special
21 Agent with a copy of a prescription for Adderall that Respondent had presented to their pharmacy
22 on or about January 16, 2012. The pharmacist on duty refused to fill the prescription, and
23 returned it to Respondent because it appeared to be fraudulent. Later that day, a customer
24 brought the same prescription to the pharmacy stating that he had found it on the copy machine
25 located inside the store. The pharmacist attempted to call the physician's telephone number on
26 the prescription but it was continuously busy. The telephone number was subsequently traced to
27 a family member of Respondent. The pharmacist found the physician's correct telephone number
28 on the internet; the physician stated that he had seen Respondent as a patient on two occasions but

1 had never prescribed him Adderall. After reviewing Respondent's patient history profile at CVS,
2 the pharmacist discovered that Respondent had received 60 tablets of Adderall, prescribed by the
3 same physician, at a different CVS location on January 15, 2012. The DEA Special Agent also
4 confirmed with the physician that he never wrote the prescriptions for Adderall, and that the
5 prescription forms did not match the forms used by the physician. As a result of the DEA
6 investigation, Respondent was arrested on February 15, 2012 for prescription fraud and burglary.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Conviction of a Drug-Related Felony)**

9 19. Respondent has subjected his registration to disciplinary action under sections 4301,
10 subdivision (k) of the Code for unprofessional conduct in that on or about April 25, 2012, as
11 detailed in paragraph 18, above, Respondent was convicted of violating 11173, subdivision (a),
12 obtaining a prescription by fraud/deceit, a felony.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

15 20. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
16 Code for unprofessional conduct in that on or around January 15, 2012 and January 16, 2012,
17 Respondent obtained, or attempted to obtain, controlled substances from a pharmacy using fraud,
18 deceit, and dishonesty, as detailed in paragraph 18, above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violation of California Statutes Regulating Controlled Substances)**

21 21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
22 Code for unprofessional conduct in that on or about January 15, 2012 and January 16, 2012,
23 Respondent knowingly violated Business and Professions Code sections 4022, 4059, and 4060,
24 and Health and Safety Code section 11173, subdivision (a), as detailed in paragraph 18, above.

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FIFTH CAUSE FOR DISCIPLINE

(Violating Federal & State Laws & Regulations Governing Pharmacy)

22. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code for unprofessional conduct in that on or about January 15, 2012 and January 16, 2012, Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when he obtained, or attempted to obtain, controlled substances using fraud and deceit, as detailed in paragraph 18, above.

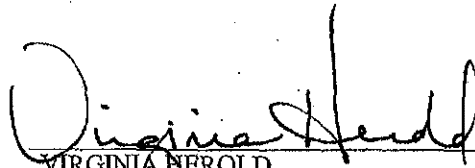
PRAYER

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. Revoking or suspending Pharmacy Technician Registration Number TCH 114951, issued to Arash Shafihie;
2. Ordering Arash Shafihie to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/14/12



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

SD2012703760