

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

In the Matter of the Accusation Against:

JAVID JAVDANI,

Pharmacist License No. RPH 46527

Respondent.

Case No. 5492

OAH No. 2016071096

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to page one, paragraph #2:

The Original Pharmacist License Number should read as "RPH 46527".

In addition, a technical change is made to page twelve, under Order, paragraph #1, in which the license should read as "Pharmacist License Number RPH 46527."

The technical changes made above do not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on January 11, 2017.

IT IS SO ORDERED this 12<sup>th</sup> day of December 12, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 2, 2016, in San Diego, California,

Manuel Arambula, Deputy Attorney General, represented complainant Virginia Herold.

Herb L. Weinberg, Attorney at Law, represented respondent Javid Javdani.

The matter was submitted on November 2, 2016.

**FACTUAL FINDINGS**

*Jurisdiction*

1. On March 18, 2016, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board) filed Accusation No. 5492 in her official capacity. Respondent filed a timely Notice of Defense.

*License History*

2. On August 16, 1993, the Board issued Original Pharmacist License Number RHP 46527 to respondent to practice pharmacy in California.

On July 8, 2002, the Board issued Original Permit Number HSP 45655 to THC Orange County, Inc. to do business as Kindred Hospital-San Diego in San Diego. On June 12, 2014, the

Board issued Original Compounding Permit Number LSC 100478 to THC Orange County, Inc., d.b.a. Kindred Hospital-San Diego, to compound sterile injectable drug products.

Board records show that respondent was the Pharmacist-In-Charge of Kindred Hospital-San Diego from June 6, 2002, to October 1, 2015.

*Accusation*

3. The accusation alleges that cause for discipline against respondent's license exists pursuant to Business and Professions Code sections 490 and 4301, subdivisions (f) and (l), based upon his three 2015 misdemeanor convictions.

*Respondent's Convictions*

4. On July 7, 2015, in the Superior Court of California, County of San Diego, respondent pled guilty and was convicted of two counts of violating Insurance Code section 11760, subdivision (a) (insurance fraud) and one count of violating Unemployment Insurance Code section 2117.5 (failure to file a payroll tax return). All three convictions were misdemeanors.

The plea was entered pursuant to a plea bargain. In exchange for respondent's guilty pleas to the three misdemeanor charges, two other charges were dismissed and a co-defendant, Whole Mart International, LLC, pled guilty to one felony count of insurance fraud. In addition, respondent was ordered to pay restitution in the amount of \$350,000 in two installments. The restitution was allocated to CNA Insurance in the amount of \$85,004, to EDD in the amount of \$164,996, and to WC Fraud Fund in the amount of \$100,000. Whole Mart International was ordered to pay \$25,000 to each of four victims of wage theft. The agreement provided that respondent would be sentenced to a term of one year in local jail for each count, with the terms to run consecutively, for a total of three years; imposition of sentence was suspended for three years pending compliance with each term of the plea agreement and the terms of probation; and respondent would be ordered to perform 120 hours of community service or public works at a charity/public works. Another co-defendant agreed to plead guilty to failing to comply with a government request and was ordered to pay any fines associated with the conviction for an infraction.

5. On April 7, 2016, the court placed respondent on probation for three years and suspended imposition of a commitment to the sheriff for 1,090 days pending successful completion of probation. The court imposed a fine of \$820 and other fees and assessments. The court determined that respondent had complied with the terms of the plea agreement and that restitution had been paid in full.

6. The record does not contain an investigation report describing the facts surrounding respondent's convictions. Respondent testified at the hearing that in 2005, he opened a grocery store for his sister and in 2011, they opened a restaurant next door. Presumably this was Whole

Mart International, LLC<sup>1</sup>. Respondent explained that he worked full time for Kindred Hospital so his work for Whole Mart International was less than full time. The company employed 100 people.

The criminal indictment alleged that between June 10, 2011, and June 10, 2012, and again between June 10, 2012, and January 11, 2013, respondent filed false and fraudulent statements of facts material to the determination of workers' compensation premiums. It also alleged that between January 1, 2008, and June 30, 2014, respondent and his sister willfully failed to file payroll tax records with the intent to evade a tax. Respondent's guilty plea and the change of plea form he signed establish respondent committed these unlawful acts.

7. Respondent paid the \$350,000 restitution ordered by the court and paid each of the four employees \$25,000. This latter amount was for overtime work for which the four employees had not been paid.

8. Respondent completed his community service by working at Mama's Kitchen. After he completed the required 120 hours, he continued to conduct food drives and delivers food to patients with HIV.

9. Respondent's convictions are substantially related to the qualifications, functions, or duties of a pharmacist. Cal. Code of Regs., tit. 16, § 1770; *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal. App. 3d 461, 469-70.

#### *Complainant's Evidence*

10. Christine Acosta is a supervising inspector for the Board. She is a pharmacist and has worked for the Board since 2011. She testified at the hearing as an expert as follows: She reviewed respondent's convictions and believed they violated the duties of a pharmacist because completing paperwork accurately and honestly is important for a pharmacist; a significant portion of the work of a pharmacist is reporting information on documents; respondent failed to do that in connection with the other businesses he operated; and therefore he cannot be trusted to submit accurate and honest documents as a pharmacist.

Respondent submitted five character letters. Ms. Acosta reviewed the letters and investigated the writers. She was looking for letters written by people who had worked with respondent but she found that none of the letters were written by people who had worked with respondent. She testified as follows:

A. Letter from Amir Shojaei, Pharm.D, Ph.D: Ms. Acosta testified Mr. Shojaei is licensed in California but the only connection between him and respondent was that they were classmates and they both graduated from the University of the Pacific.

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<sup>1</sup> The accusation alleges that respondent owned two businesses, Balboa International Market and Sufi Mediterranean Cuisine, located in San Diego, but no evidence was offered to establish respondent owned these businesses.

B. Letter from Ramin Torabi, Pharm.D.: Ms. Acosta testified Mr. Torabi has been licensed as an intern in California since 2015 but is not licensed as a pharmacist in California; he is licensed as a pharmacist in Oregon; she contacted Kindred Hospital and the current pharmacist-in-charge and concluded that Mr. Torabi had never worked at Kindred because there was no employment file; since he had never worked with respondent, he had no foundation upon which to offer an opinion about respondent's work as a pharmacist.

C. Letter from Kathleen Palmer: Ms. Acosta testified Ms. Palmer is not currently licensed by the Department of Consumer Affairs as either a registered nurse or a licensed vocational nurse; she is licensed as an LVN in Florida.

D. Letter from Martin and Carol Wilson: Ms. Acosta testified they are not medical personnel and do not describe how they worked with respondent daily for 12 years.

E. Letter from Fabiborz Nezhadian, M.D.: Ms. Acosta testified Dr. Nezhadian is a licensed physician in California and likely is a psychiatrist; because he is not a pharmacist, he cannot offer an opinion about respondent's quality of work.

Ms. Acosta pointed out that although all the writers noted that they were aware of the case pending before the Board, none of them indicated they were aware of the criminal case or respondent's conviction of three misdemeanor offenses.

#### *Respondent's Evidence*

11. Respondent testified at the hearing as follows: he was born in Iran and came to the United States in 1983; he is married and has one minor child; he started college in 1983 in Los Angeles and obtained a bachelor's degree in chemistry from Cal Poly Pomona; he obtained his doctor of pharmacy degree from the University of the Pacific with honors and became licensed in 1993; he has practiced pharmacy for 23 years; he worked various jobs to earn money to attend college and pharmacy school and after school, held several internships; he began working as a pharmacist for the VA and then the Navy; he worked for six months at a Rite Aid Pharmacy as a physician-in-charge; he worked at Harborview Hospital in San Diego as a pharmacist, then as a manager, and finally as a director of pharmacy; after Harborview Hospital closed, he began working for Kindred Hospital as a director of pharmacy; he worked there for 18 years until he resigned in 2015; he has also worked as a director of pharmacy at Scripps Encinitas, Scripps La Jolla, and Scripps Mercy Hospitals; he worked as a manager and director of pharmacy for at least three hospitals; in his 23 years, he has never violated any laws relating to pharmacy and has had no other accusation filed against him.

In connection with the criminal case, respondent testified: he cooperated with investigators by providing all requested records and willingly entered into a plea agreement; his crimes consisted of a failure to document; he had a general manager operating the businesses but he was responsible for their operation; he paid full restitution and has complied with all the terms of probation.

Respondent apologized for what he did and expresses regret every day. He testified he should have been more responsible and pledged that such criminal conduct would not happen again. He resigned from Kindred because he did not want the hospital to be harmed.

Respondent testified that while he worked at Kindred Hospital, he travelled around the country to train other directors of pharmacy, audited other pharmacies and helped them develop policies and procedures. He has also helped the DEA with its investigations. Respondent believed he was an excellent pharmacist.

Regarding the five letters, respondent testified as follows: he chose people who had known him the longest to write letters on his behalf; he told all the letter writers that he had been convicted; he worked with Ms. Palmer when she was a licensed vocational nurse at Harborview Hospital; Ms. Palmer went on to work as an LVN at Scripps Mercy Hospital; he worked with Dr. Nezhadian at Harborview Hospital; he never worked with Mr. Torabi; they are friends and they discussed many issues relating to the operation of pharmacies; Mr. Torabi visited respondent at Kindred Hospital; he described to Mr. Torabi what he did at Kindred Hospital and how he handled patients; and he helped Mr. Torabi prepare for the California pharmacy examination.

Respondent testified that as the pharmacist-in-charge, he was responsible for everything relating to the pharmacy at Kindred Hospital but he did not deal with the financial aspects of the hospital's pharmacy operation. He described random audits that the hospital's corporate financial personnel performed. He explained that he was not responsible for paying taxes, workers' compensation, or payroll at Kindred Hospital.

12. Respondent submitted the following character letters:

A. Amir Shojaei, Pharm.D, Ph.D., wrote as follows: he has known respondent since 1990 and was aware of the pending case; he attested to respondent's professional integrity and honesty; he witnessed respondent's work as a pharmacist and admired his remarkable knowledge of the art and science of the profession; he believed respondent's care of his patients was impressive and respondent was a man of high moral character with very high standards.

B. Ramin Torabi, Pharm.D., wrote as follows: he has known respondent since 1983 when they attended college together; he attested to the strength of respondent's character and compassion for others; he had been a pharmacist for 28 years and in that capacity was impressed with respondent's enthusiasm, communication skills and demeanor; he witnessed respondent working at several hospitals as he precepted and mentored students, managed pharmacists and technicians, led projects with other pharmacists and hospital directors in the San Diego area and nationwide; he knew that respondent had developed many policies and procedures for hospital practice that included controlled substance audit programs; he assisted hospitals in passing state and federal reviews; he knew that respondent had traveled around the country to audit and help other directors manage their pharmacies and pass surveys; and respondent was well-respected among his peers. Mr. Tobar added that respondent was a cherished friend and a thoughtful and outstanding citizen with a great commitment to community service. He confirmed that respondent is continuing to assist patients with HIV.

C. Kathleen Palmer wrote as follows: she has known respondent for 23 years as a friend and colleague; she worked with him at two hospitals in San Diego; she described respondent's pharmacy knowledge and management skills as impressive; he is diligent at preventing medication errors and hazards; he has helped other hospitals improve their failing pharmacies so that they can pass accreditation; she was aware of the Board's case against respondent and the criminal case; she described respondent as the most trustworthy and honest person she has known as well as being kind and generous; respondent was very trusting of people, humble, and grateful for his success; he gave back to the community; he has compassion for others; he came to the United States not speaking English and put himself through school; he is an example of integrity, generosity, and honesty; and he is an asset to all employers in his field.

D. Martin and Carol Wilson wrote as follows: they have known respondent for more than 12 years and worked with him and his family almost daily; their relationship is both professional and personal; they have found him to be honest, sincere, caring, responsible, dependable and compassionate; respondent is a respected leader in the community and worthy of public trust; and they were aware of the matter pending before the Board.

E. Fabiborz Nezhadian, M.D., wrote: he was aware of the case pending before the Board; he has practiced medicine in California for 23 years and has known respondent for more than 20 years; he worked with respondent at Harborview Hospital while he served as the clinical director of one of the units there; they worked together on a daily basis and shared the care of many patients; he believed respondent had the highest ethical standards, with high regard for the laws, rules and regulations in the field of medicine; respondent had the highest standards for patient care and safety; and he found respondent to be one of the most honest, caring, and hardworking professionals that he had known in his career.

#### *Costs*

13. The Board incurred costs of investigation of this matter in the amount of \$5,457.50 for the services of the Attorney General. The amount is reasonable.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides in part:

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:

[9] . . . [9]

(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.

[¶] . . . [¶]

(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.

2. Business and Professions Code section 490 provides, in part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

[¶] . . . [¶]



(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An 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 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.

3. Cause was established to revoke or suspend respondent's pharmacy license pursuant to Business and Professions Code sections 4301, subdivision (l), and 490 for conviction of crimes substantially related to the qualifications, functions, or duties of a licensed pharmacist.

4. Cause was established to revoke or suspend respondent's license pursuant to Business and Professions Code sections 4301, subdivision (f), commission of acts involving dishonesty, fraud, deceit or corruption.

5. Cause was established to require respondent to pay the Board's costs of investigation and enforcement of this matter in the amount of \$5,457.50.

6. California Code of Regulations, title 16, section 1769 provides in part:

(c) 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.

7. California Code of Regulations, title 16, section 1760 provides that in reaching a decision on a disciplinary action, the Board's Disciplinary Guidelines should be considered.

8. The Board's Guidelines provide in part:

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

9. The Guidelines divide violations of pharmacy laws into categories and provide a recommended minimum and maximum penalty for each category. Violations of Business and Professions Code sections 4301, subdivision (f) and (l) are considered Category II offenses. According to the Guidelines, Category II discipline is recommended for "violations which reflect on ethics...or a criminal conviction not involving dangerous drugs or controlled substances or involving possession or use of dangerous drugs or controlled substances."

The evidence established a violation of Category II, which carries a minimum penalty of revocation, stayed and three years probation, and a maximum penalty of revocation.

The evidence in light of the above factors demonstrated the following:

a. Respondent's criminal acts occurred outside his work as a pharmacist. There was harm to the public in the sense that the workers' compensation insurance carrier for Whole Mart International, CNA Insurance, suffered a loss in the amount of \$85,004, EDD suffered a loss in the amount of \$164,996, and the WC Fraud Fund suffered a loss in the amount of \$100,000.

There was no actual or potential harm to any consumer of respondent's work as a pharmacist.

b. There have been no prior disciplinary actions, citations or warnings issued against respondent.

c. The evidence established respondent was convicted of two counts of insurance fraud and one count of failing to file timely tax returns. The insurance fraud occurred over a period of 17 months and the failure to file timely tax returns took place over a period exceeding six years. The three offenses were misdemeanors. The court suspended imposition of a jail sentence after respondent paid restitution. The misdemeanor convictions and subsequent sentence indicate that the court did not consider these offenses to be particularly serious.

d. The aggravating circumstances consisted of the fact that respondent's conviction occurred just one year ago, the criminal activities occurred over a long period of time, and the amount of harm suffered by the victims of the fraud and failure to file tax returns was rather high.

e. Evidence of mitigation and rehabilitation consisted of respondent making restitution in the amount \$350,000 in a timely manner, paying an additional \$100,000 to the four employees, completion of the requirement that he perform 120 hours of community service, and his additional volunteer work. In addition, the fact that none of respondent's criminal acts were committed in connection with his professional duties as a pharmacist must be considered a mitigating circumstance.

f. Respondent has complied with all the terms of probation. He will remain on probation until April 7, 2019. Consequently, his convictions have not been set aside pursuant to Penal Code section 1203.4.

g. Respondent has been convicted of no other criminal offense.

h. The two counts of insurance fraud covered a period of 17 months that ended on January 11, 2013. The failure to file timely tax returns covered a six-year period that ended on June 30, 2014.

i. Respondent as the owner of the businesses either knew of the wrongdoing occurring in the businesses or is responsible for the wrongdoing because he was the owner. The fact that he worked there less than full time does not excuse or justify his responsibility. As a result of the insurance fraud and failure to file timely tax returns, respondent received a substantial financial benefit.

10. The issue in this case is whether respondent's pharmacy license should be revoked or placed on probation. The weight of the evidence in light of the disciplinary factors considered in Legal Conclusion 9 points to the conclusion that probation is the appropriate discipline for respondent's convictions.<sup>2</sup>

The most important consideration is that none of respondent's crimes occurred within the context of his work as a pharmacist. He was the co-owner of a grocery store and a restaurant that violated laws relating to workers' compensation and the filing of tax returns. Respondent's work as a pharmacist while he worked for Kindred Hospital for more than 18 years did not include the financial issues that resulted in the criminal convictions. There is no evidence that respondent is not a competent pharmacist, and the character letters suggest he is knowledgeable, honest and well-respected within his profession. Respondent promptly made restitution ordered by the court, completed his community service obligation, and has continued to volunteer to help persons with HIV. He apologized at the hearing for the conduct that led to his convictions and he took responsibility for them. Respondent has been licensed for 23 years and this is the first disciplinary matter brought against him. Likewise, respondent's 2015 convictions are his only criminal convictions.

All of these considerations taken together compel the conclusion that the public would be adequately protected if respondent is placed on probation for three years, and that a revocation of his license is unwarranted.

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<sup>2</sup> It should be noted that the Board of Medical Quality Assurance in the *Windham* case also imposed probation on a doctor who had been convicted of income tax evasion. *Windham v. Board of Medical Quality Assurance, supra* at 467-68.

## ORDER

1. License number 46527, issued to respondent Javid Javdani is revoked; however, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

### **1. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

### **2. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

### **3. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with

the board or its designee during the period of probation, shall be considered a violation of probation.

#### **4. Cooperate with Board Staff**

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

#### **5. Continuing Education**

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

#### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5492 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5492, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5492 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5492 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.

#### **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant**

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

#### **8. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,457.50.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

#### **9. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

#### **10. Status of License**

Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation. If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## **11. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

## **12. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

## **13. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 30 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.



It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 30 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 30 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

#### **14. Violation of Probation**

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

#### **15. Completion of Probation**

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

DATED: November 10, 2016

DocuSigned by:

*Alan S. Meth*

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ALAN S. METH

Administrative Law Judge

Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 5492

12 **JAVID JAVDANI**  
13 **2860 Angell Avenue**  
14 **San Diego, CA 92122**

**A C C U S A T I O N**

15 **Pharmacist License No. RPH 46527**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.  
22 2. On or about August 16, 1993, the Board issued Pharmacist License Number RPH  
23 46527 to Javid Javdani (Respondent). The Pharmacist License was in full force and effect at all  
24 times relevant to the charges brought herein and will expire on November 30, 2016, unless  
25 renewed.

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**JURISDICTION**

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

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

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

**STATUTORY PROVISIONS**

6. 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.

7. 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."

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1 8. Section 4301 of the Code states:

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

6 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
7 deceit, or corruption, whether the act is committed in the course of relations as a  
8 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

18 **REGULATORY PROVISIONS**

19 9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

- 24 (1) Nature and severity of the act(s) or offense(s).
- 25 (2) Total criminal record.
- 26 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 27 (4) Whether the licensee has complied with all terms of parole, probation,  
28 restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

6 COSTS

7 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
11 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
12 included in a stipulated settlement.

13 FIRST CAUSE FOR DISCIPLINE

14 **(July 7, 2015 Criminal Conviction for Crimes that are Substantially Related to the  
15 qualifications, functions, or duties of a Pharmacist)**

16 12. Respondent has subjected his license to discipline under sections 490 and 4301,  
17 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the  
18 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

19 13. On or about July 7, 2015, in a criminal proceeding entitled *People of the State of*  
20 *California v. Javid Javdani*, in San Diego County Superior Court, case number SCD235497,  
21 Respondent was convicted on his plea of guilty to two counts of violating Insurance Code section  
22 11760, subdivision (a), Misrepresenting a Fact to Obtain Workers Compensation Insurance, and  
23 one count of Unemployment Insurance Code section 2117.5, Failure to File a Return in a Timely  
24 Manner, all misdemeanors. As a result of a plea agreement, the court dismissed one count each of  
25 Failure to Pay Tax (Insurance Code, § 2118.5), and Grand Theft of Personal Property, in violation  
26 of Penal Code section 487(a)).

27 14. As a result of the conviction, Respondent was sentenced to a term of one year in local  
28 jail for each count, to run consecutively, and imposition of each sentence was suspended.

1 Respondent was placed on three years probation and was ordered to pay \$350,000 in restitution  
2 to three entities. The first installment of \$100,000 was paid by December 31, 2015, and the  
3 balance of \$250,000 is to be paid on or before April 7, 2016, the date for Respondent's  
4 sentencing. Respondent was further ordered to complete 120 hours of community service by  
5 December 31, 2015.

6 15. The facts that led to the convictions are that Respondent is the owner of a two  
7 businesses, the Balboa International Market and Sufi Mediterranean Cuisine, located in San  
8 Diego, California. As owner of these businesses, Respondent was in charge of compliance with  
9 California's laws requiring a businesses to make honest and complete disclosures to their  
10 insurance carriers for the purpose of determining a premium, rate, or cost of insurance, under  
11 Insurance Code section 11760, subsection (a).

12 16. From on or about June 10, 2011, through June 10, 2012, and again from June 10,  
13 2012 through January 11, 2013, Respondent paid his employees in cash for their overtime wages.  
14 These overtime cash payments were not reported to the California Employment Development  
15 Department (EDD) and the worker's compensation insurance carriers who insured Respondent's  
16 businesses. The failure to report these overtime wages resulted in lower worker's compensation  
17 premiums paid to the insurance carriers and lower taxes paid to the EDD.

18 17. From on or about January 1, 2008, through June 30, 2014, Respondent filed tax  
19 returns with the EDD for his two businesses. These tax returns required Respondent to file honest  
20 and complete tax returns with the EDD. Respondent's failure to report his overtime cash  
21 payments to his employees reduced his tax liability and constituted a violation of Unemployment  
22 Insurance Code section 2117.5.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(The Commission of an Act Dishonesty, Fraud, or Deceit)**

25 18. Respondent has subjected his license to discipline under section 4301, subdivision (f),  
26 of the Code for unprofessional conduct in that Respondent committed acts of dishonesty, fraud, or  
27 deceit when he falsely misrepresented facts to his insurance carriers in order to pay lower  
28

1 insurance premiums and failed to report all of his employees' wages to the EDD in order to  
2 reduce his tax liability, as described in paragraphs 13 through 17.

3 PRAYER

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

6 1. Revoking or suspending Pharmacist License Number RPH 46527, issued to Javid  
7 Javidani;

8 2. Ordering Javid Javidani to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3;

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

12  
13 DATED: 3/18/16

*Virginia Herold*

14 VIRGINIA HEROLD  
15 Executive Officer  
16 Board of Pharmacy  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

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