

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **IDA SHLAIN**
13 **aka IDA HOVAY**
14 P.O. Box 10793
Beverly Hills, CA 90213
15 **Original Pharmacist License No. 43194**
16 Respondent.

Case No. 3517
A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about March 8, 1990, the Board of Pharmacy (Board) issued Original
22 Pharmacist License No. 43194 to Ida Shlain (Respondent Shlain). The Pharmacist License was
23 in full force and effect at all times relevant to the charges brought herein, and will expire on
24 August 31, 2011, unless renewed.
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1 **JURISDICTION**

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

4 **STATUTORY PROVISIONS**

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

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

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 states, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19

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

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

26

27 (l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16 8. Welfare and Institutions Code section 14123.25, provides in pertinent part:

17 “(a) In lieu of, or in addition to, the imposition of any other sanction available to it,
18 including the sanctions and penalties authorized under Section 14123.2 or 14171.6, and as the
19 "single state agency" for California vested with authority to administer the Medi-Cal program, the
20 department shall exercise the authority granted to it in Section 1002.2 of Title 42 of the Code of
21 Federal Regulations, and may also impose the mandatory and permissive exclusions identified in
22 Section 1128 of the federal Social Security Act (42 U.S.C. Sec. 1320a-7), and its implementing
23 regulations, and impose civil penalties identified in Section 1128A of the federal Social Security
24 Act (42 U.S.C. Sec. 1320a-7a), and its implementing regulations, against applicants and
25 providers, as defined in Section 14043.1, or against billing agents, as defined in Section 14040.1.
26 The department may also terminate, or refuse to enter into, a provider agreement authorized under
27 Section 14043.2 with an applicant or provider, as defined in Section 14043.1, upon the grounds
28 specified in Section 1866(b)(2) of the federal Social Security Act (42 U.S.C. Sec. 1395cc(b)(2)).

1 Notwithstanding Section 100171 of the Health and Safety Code or any other provision of law,
2 any appeal by an applicant, provider, or billing agent of the imposition of a civil
3 penalty, exclusion, or other sanction pursuant to this subdivision shall be in accordance with
4 Section 14043.65, except that where the action is based upon a conviction for any crime involving
5 fraud or abuse of the Medi-Cal, Medicaid, or Medicare programs, or an exclusion by the federal
6 government from the Medicaid or Medicare programs, the action shall be automatic and not
subject to appeal or hearing.”

7 9. United States Code, title 18, section 1035 states:

8 “(a) Whoever, in any matter involving a health care benefit program, knowingly
9 and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
10 or (2) makes any materially false, fictitious, or fraudulent statements or representations, or makes
11 or uses any materially false writing or document knowing the same to contain any materially
12 false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment
13 for health care benefits, items, or services, shall be fined under this title or imprisoned not more
14 than 5 years, or both.

15 (b) As used in this section, the term "health care benefit program" has the meaning
16 given such term in section 24 (b) of this title.”

17 REGULATORY PROVISION

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

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

25 COST RECOVERY

26 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 ***(Criminal Conviction)***

5 12. Respondent Shlain is subject to disciplinary action under sections 4300, 4301,
6 subdivisions (f) and (l), and 490 of the Code, as defined in the California Code of Regulations,
7 title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the
8 qualifications, functions or duties of a pharmacist, as follows:

9 a. On or about December 20, 2005, after pleading guilty, Respondent was
10 convicted of one felony count of violating 18 USC § 1035 [false statement relating to health care
11 matters-class D felony], in the criminal proceeding entitled *U.S. vs. Hovav* (U.S. District Court,
12 Eastern District, 2005, No. CR-03-00126.) The Federal court ordered Respondent to make
13 restitution to the California Department of Health and Human Services of \$46,604.00 and the
14 Center for Medicare and Medi-Cal Services of \$46,604.00, and placed her on probation for a
15 period of 2 years with terms and conditions.

16 **SECOND CAUSE FOR DISCIPLINE**

17 ***(Unprofessional Conduct)***

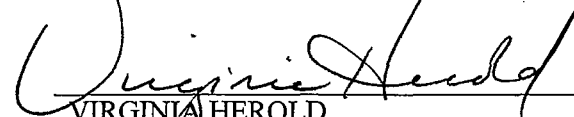
18 13. Respondent Shlain is subject to disciplinary action under section 4301, subdivisions
19 (f) and (j), in conjunction with United States Code, title 18, section 1035, and Welfare and
20 Institutions Code section 14123.25, subdivision (a), on the grounds of unprofessional conduct in
21 that she committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption in
22 violation of the statutes of this state or of the United States regulating controlled substances and
23 dangerous drugs. Specifically, November 16, 2001, Respondent knowingly and willfully made a
24 materially false statement regarding claims for payment of health care services by the Medi-Cal
25 program, namely, she submitted invoices and other purchase documentation to the Department of
26 Health Services which falsely stated that her pharmacy, West Hollywood Pharmacy, had
27 purchased \$93,208 of drugs and other pharmacy items for which the pharmacy had later
28 submitted claims to the Medi-Cal Program.

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PRAYER

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

1. Revoking or suspending Pharmacist License No. 43194, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/28/11 

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