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

11
12 In the Matter of the Accusation Against:

13 TYMOUR FARAH SABA
24601 Seth Circle
14 Dana Point, CA 92629

15 Pharmacy Technician Registration No. TCH
72030

16 Respondent.
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Case No. 3764

ACCUSATION

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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 October 3, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 72030 to Tymour Farah Saba (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2012, unless renewed.
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1 notwithstanding that evidence of that misconduct may be recorded in a record
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program operated by
4 any agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division.

6 9. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a
8 board within the department pursuant to law to deny an application for a license or
9 to suspend or revoke a license or otherwise take disciplinary action against a
10 person who holds a license, upon the ground that the applicant or the licensee has
11 been convicted of a crime substantially related to the qualifications, functions, and
12 duties of the licensee in question, the record of conviction of the crime shall be
13 conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of
15 the crime in order to fix the degree of discipline or to determine if the conviction is
16 substantially related to the qualifications, functions, and duties of the licensee in
17 question.

18 As used in this section, "license" includes "certificate," "permit,"
19 "authority," and "registration."

20 10. Section 4059 of the Code provides in part that a person may not furnish any
21 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
23 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

25 11. Section 4060 of the Code states:

26 No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
3 stock of dangerous drugs and devices.

4 12. Section 4301 of the Code states:

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

8 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
9 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.

10

11 (h) The administering to oneself, of any controlled substance, or the use of
12 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
13 dangerous or injurious to oneself, to a person holding a license under this chapter,
14 or to any other person or to the public, or to the extent that the use impairs the
ability of the person to conduct with safety to the public the practice authorized by
the license.

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

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19 (l) The conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. The record of conviction of
21 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
22 States Code regulating controlled substances or of a violation of the statutes of this
23 state regulating controlled substances or dangerous drugs shall be conclusive
24 evidence of unprofessional conduct. In all other cases, the record of conviction
25 shall be conclusive evidence only of the fact that the conviction occurred. The
26 board may inquire into the circumstances surrounding the commission of the
27 crime, in order to fix the degree of discipline or, in the case of a conviction not
28 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

1 subsequent order under Section 1203.4 of the Penal Code allowing the person to
2 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.

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4 (o) Violating or attempting to violate, directly or indirectly, or assisting in
5 or abetting the violation of or conspiring to violate any provision or term of this
6 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.

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8 13. Health and Safety Code section 11350 provides that every person who possesses a
9 controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or
10 veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state
11 prison.

12 **REGULATORY PROVISIONS**

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

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15 (b) When considering the suspension or revocation of a facility or a
16 personal license on the ground that the licensee or the registrant has been
17 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:

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

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

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

1 a. On or about June 17, 2008, in a criminal proceeding entitled *People of the State*
2 *of California vs. Tymour Farah Saba*, in Orange County Superior Court case number 08SF0468,
3 Respondent was convicted on his plea of guilty of for violation of Penal Code section 484(a)-488,
4 petty theft.

5 b. The facts that led to the conviction are that Respondent was employed part-
6 time as a pharmacy technician at CVS Pharmacies from September 26, 2004 through May 5,
7 2008. Respondent worked as a floater technician at three CVS Pharmacies: Store number 6710
8 in Ladera Ranch; Store number 8863 in Laguna Niguel; and Store number 9591 in Laguna Beach.
9 In or around April 2008, the Loss Prevention Manager of the Ladera Ranch CVS Pharmacy began
10 noticing inventory losses in the pharmacy department. With the assistance of a Drug
11 Enforcement Agency Agent, the Loss Prevention Manager successfully set up surveillance
12 cameras in the pharmacy and, upon review of the video, discovered that Respondent placed
13 bottles of medication in his pocket on April 28, 2008. On May 5, 2008, the Loss Prevention
14 Manager and DEA Agent watched live video feed from the pharmacy department and observed
15 Respondent remove two (2) bottles of Hydrocodone tablets from the pharmacy shelf and place
16 them into his two (2) front pants pockets. Respondent then exited the pharmacy area and left the
17 store. Respondent was detained outside the store and brought into the manager's office inside the
18 store. Respondent removed the two (2) bottles of Hydrocodone 10mg from his pockets. Both
19 bottles were sealed and each contained one-hundred (100) tablets. Respondent admitted to the
20 DEA Agent and Loss Prevention Manager that he had stolen the two (2) bottles of Hydrocodone
21 and had stolen as many as seventy (70) bottles of prescription medication over the previous six
22 (6) months from the Ladera Ranch CVS Pharmacy and Laguna Niguel CVS Pharmacy.
23 Respondent also admitted to stealing Suboxone, alprazolam and Lortab. Respondent completed a
24 written statement, wherein he admitted that he had stole Norco, Lortab, Xanax and Suboxone
25 from CVS Pharmacy Store Numbers 6710, 8863, 9591. The Loss Prevention Manager then
26 called the Orange County Sheriff's Department to report the incident.

27 c. An officer from the Orange County Sheriff's Department interviewed
28 Respondent. Respondent admitted that he did not have a prescription for Hydrocodone but he

1 believed that he was addicted to it. Respondent admitted that he had stolen Hydrocodone from
2 both the CVS Pharmacy in Laguna Niguel and Ladera Ranch. Respondent admitted that he had
3 stolen approximately seventy (70) bottles of the medications over the course of six to eight
4 months between both stores. Respondent stated that he usually stole one (1) or two (2) bottles at
5 a time, that he used between five (5) to twenty (20) tablets of Hydrocodone a day and that he was
6 planning on stealing the two (2) bottles of Hydrocodone that day. Respondent was arrested and
7 transported to the Orange County Jail. Respondent was interviewed again at the jail. Respondent
8 admitted to the officer that the Hydrocodone tablets were for his own use but that he "might have
9 sold a little here and there."

10 d. During an interview with the Board's investigator on or about January 26,
11 2009, Respondent admitted that he stole the controlled substances from the CVS Pharmacies, that
12 he did not have a prescription for the drugs, that the drugs were for his personal use, and that he
13 did not intend on working in a pharmacy ever again because he was addicted to Norco.

14 e. On May 28, 2008, Respondent was charged in a felony complaint for violation
15 of Health and Safety Code section 11350(a), possession of a controlled substance, and violation
16 of Penal Code section 484(a)-488, petty theft. On June 17, 2008, Respondent entered a plea of
17 guilty to violation of Health and Safety Code section 11350(a), possession of a controlled
18 substance, and violation of Penal Code section 484(a)-488, petty theft. On his guilty plea form,
19 Respondent admitted that he "willfully and unlawfully possessed a useable quantity of a
20 controlled substance, hydrocodone and stole property from another with the specific intent to
21 permanently deprive the owner." As a result of his conviction for petty theft, Respondent was
22 sentenced to serve twenty (20) days in Orange County Jail, required pay all fines, fees and
23 restitution, ordered to stay away from the CVS Pharmacy in Ladera Ranch, and sentenced to three
24 (3) years informal probation. As to the violation of Health and Safety Code section 11350(a),
25 Respondent was granted deferred entry of judgment pursuant to Penal Code section 1000,
26 pending the completion of a drug treatment program. On January 15, 2010, upon proof of
27 completion of the program, the count was dismissed.
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2. Ordering Tymour Farah Saba 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:

8/9/10



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

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