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

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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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:

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28 (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.

. . . .

(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 –

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(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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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

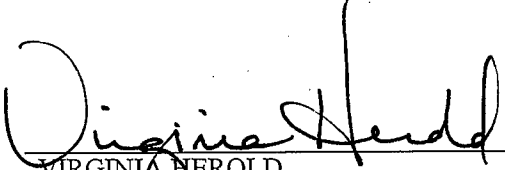
3 22. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
4 Code for unprofessional conduct in that on or about January 15, 2012 and January 16, 2012,
5 Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy
6 Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California
7 Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when he obtained,
8 or attempted to obtain, controlled substances using fraud and deceit, as detailed in paragraph
9 18, above.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114951,
14 issued to Arash Shafihie;
- 15 2. Ordering Arash Shafihie to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 8/14/12


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

28 SD2012703760