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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. 5007

13 **OYTUN AYSE MIHALIK**
8169 Prestwick Circle
14 **Huntington Beach, CA 92646**

A C C U S A T I O N

15 **Pharmacist License No. RPH 58153**

16 Respondent.
17

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 March 6, 2006, the Board of Pharmacy issued Pharmacist License
24 Number RPH 58153 to Oytun Ayse Mihalik (Respondent). Respondent is also known as Ayse
25 Otun Akin, Ayse Mihalik, and Cindy Palmer. The Pharmacist License expired on August 31,
26 2011, and has not been renewed.

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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

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

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

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

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

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

10

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

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15 (l) The conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. The record of conviction of a violation of
17 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
18 regulating controlled substances or of a violation of the statutes of this state regulating
19 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
20 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
21 the fact that the conviction occurred. The board may inquire into the circumstances
22 surrounding the commission of the crime, in order to fix the degree of discipline or, in
23 the case of a conviction not involving controlled substances or dangerous drugs, to
24 determine if the conviction is of an offense substantially related to the qualifications,
25 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
26 conviction following a plea of nolo contendere is deemed to be a conviction within the
27 meaning of this provision. The board may take action when the time for appeal has
28 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.

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REGULATORY PROVISIONS

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

. . . .

(b) 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).

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(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.

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

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

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(March 29, 2013 Criminal Conviction for Providing Material Support to Terrorists)

13. Respondent has subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On or about March 29, 2013, in a criminal proceeding entitled *United States of America v. Oytun Ayse Mihalik, aka Ayse Otun Akin, aka Ayse Mihalik, aka Cindy Palmer*, in United States District Court, Central District, case number CR 11-833(A)-JST, Respondent was convicted on her plea of guilty to Count One of the First Superseding Indictment, a violation of 18 U.S.C. § 2339A, providing material support to terrorists, a felony.

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1 b. As a result of the conviction, on or about March 29, 2013, Respondent was
2 sentenced to serve sixty months in federal prison, pay fees and fines, and comply with the
3 requirements of probation upon release. As a result of a judicial order issued on April 1, 2013,
4 Respondent stipulated and agreed that upon the completion of her criminal proceedings, including
5 any sentence of imprisonment, Respondent will be removed to Turkey, and that the judicial order
6 of removal renders her permanently inadmissible to the United States.

7 c. The facts that led to the conviction are that on or about August 8, 2011, a
8 Federal Bureau of Investigation Special Agent and a Homeland Security Investigation Special
9 Agent interviewed Respondent at the Los Angeles International Airport upon her return from a
10 six-month stay in her home country of Turkey. Respondent told the investigators that she was a
11 licensed pharmacist, and that she intended to return to her job as a pharmacist in Orange County.
12 Respondent told the agents multiple conflicting accounts of the number and nature of Western
13 Union wire transfers she made to friends, family, and/or unknown persons overseas. Respondent
14 gave multiple conflicting stories about the various aliases she used for professional purposes,
15 personal purposes, and for transferring money overseas. Based on the information provided by
16 Respondent, the agents conducted an investigation of Respondent's various financial transfers.
17 On at least three occasions (December 21, 2010, December 29, 2010, and January 11, 2011),
18 Respondent transferred money to an individual in Pakistan using different aliases. The
19 investigation concluded that Respondent's false, fictitious and fraudulent statements and
20 representations were made in a matter involving international terrorism involving acts that (1) are
21 violent and dangerous to human life; (2) would be violations of the criminal laws of the United
22 States or any State if the acts occurred within the jurisdiction of the United States or of any State;
23 (3) are intended to intimidate and coerce a civilian population, influence the police of a
24 government by intimidation and coercion, and affect the conduct of a government by mass
25 destruction, assassination, and kidnapping; and (4) occur primarily outside the territorial
26 jurisdiction of the United States.¹

27 ¹ Taken from the February 2011 Grand Jury's First Superseded Indictment, filed
28 December 21, 2011, *U.S. v. Mihalik*, USDC Central District, case number CR11-833(a)-JHN.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

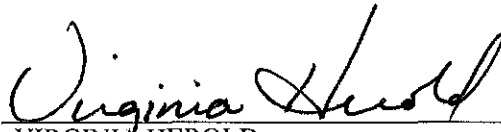
3 14. Respondent has subjected her license to discipline under section 4301, subdivision (f)
4 of the Code in that her conduct, as described in paragraph 13, above, constituted acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption, when she provided false information to
6 federal law enforcement officers, and knowingly provided financial support to terrorists.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacist License Number RPH 58153, issued to Oytun
11 Ayse Mihalik;
- 12 2. Ordering Oytun Ayse Mihalik to pay the Board of Pharmacy the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

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17 DATED: 7/23/14


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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