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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 **VAHE TAHMASIAN**
1521 Raymond Ave.
13 Glendale, CA 91201
14 Intern Pharmacist Registration No. INT 26491
15 Respondent.

Case No. 5202

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 as
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
- 21 2. On or about September 7, 2010, the Board issued Intern Pharmacist Registration No.
22 INT 26491 to Vahe Tahmasian (Respondent). The Intern Pharmacist Registration was in full
23 force and effect at all times relevant to the charges brought herein and will expire on September
24 30, 2015, unless renewed.
- 25 3. On or about August 12, 2014, the Board of Pharmacy issued a "Notice of Automatic
26 Suspension of License" pursuant to Business and Professions Code section 4311, subdivision (a),
27 due to Respondent's incarceration on or about July 7, 2014 for his conviction in violation of 18
28 U.S.C. 1349 [conspiracy to commit health care fraud] and 18 U.S.C. 1349, 2(B) [health care

1 fraud; causing an act to be done]; and 18 U.S.C. 1028A 2(B) [aggravated identity theft; causing an
2 act to be done] in case number CR 13-313(A) in the criminal proceeding entitled *United States of*
3 *America v. Vahe Tahmasian* (U.S. Dist. Ct. C.D. Cal., 2014, No. CR 13-313PA). The suspension
4 will remain in effect for the duration of Respondent's incarceration for a period of one hundred
5 twenty-one (121) months. The license will be suspended until at least January 1, 2023. A copy of
6 that decision is attached as exhibit A and is incorporated herein by reference.

7 **JURISDICTION**

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

11 **STATUTORY PROVISIONS**

12 5. Section 490 of the Code states, in pertinent part:

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

17 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
18 discipline a licensee for conviction of a crime that is independent of the authority granted under
19 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of
20 the business or profession for which the licensee's license was issued.

21 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
22 conviction following a plea of nolo contendere. Any action that a board is permitted to take
23 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
24 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
25 made suspending the imposition of sentence, irrespective of a subsequent order under the
26 provisions of Section 1203.4 of the Penal Code."

27 6. Section 4300 of the Code provides in pertinent part, that every license issued by the
28 Boards is subject to discipline, including suspension or revocation.

1 7. Section 4300.1 of the Code states:

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

7 8. Section 4301 of the Code states, in pertinent part:

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

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

15 "(g) Knowingly making or signing any certificate or other document that falsely represents
16 the existence or nonexistence of a state of facts.

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
6 indictment.

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8 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
9 violation of or conspiring to violate any provision or term of this chapter or of the applicable
10 federal and state laws and regulations governing pharmacy, including regulations established by the
11 board or by any other state or federal regulatory agency.

12 "(p) Actions or conduct that would have warranted denial of a license."

13 **REGULATORY PROVISIONS**

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

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

21 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
5 that, Respondent was convicted of a crime substantially related to the qualifications, functions or
6 duties of an intern pharmacist.

7 a. On or about March 21, 2014, after being found guilty by a jury, Respondent was
8 convicted of one felony count of violating Title 18 U.S.C. section 1349 [conspiracy to commit
9 health care fraud], six felony count of 18 U.S.C. section 1347 [health care fraud], and six felony
10 counts of U.S.C. section 1028A [aggravated identity theft] in the criminal proceeding entitled
11 *United States of America v. Vahe Tahmasian* (U.S. Dist. Ct. C.D. Cal., 2014, No. CR 13-313PA.)

12 On or about July 7, 2014 the Court sentenced Respondent to serve 121 months in prison and
13 placed him on supervised probation for a term of three years upon his release. The Respondent
14 was also ordered to pay restitution to Medicare in the total amount of \$994,036.

15 b. The circumstances surrounding the conviction are that on or between April 10, 2009
16 and February 15, 2011, the Respondent and his co-conspirators operated a business and fraud
17 scheme. Respondent and his co-conspirators purchased a company named Orthomed and put the
18 company in the name of a straw owner. Respondent, and his co-conspirators submitted a total of
19 \$1,584,640 in false claims to Medicare. Respondent would submit, and cause to be submitted,
20 false and fraudulent claims to Medicare for DME (durable medical equipment) and related services
21 that were neither medically necessary, or not actually provided by Orthomed. Medicare paid
22 Orthomed approximately \$994,039 for the false and fraudulent claims. Over a six-week period in
23 2011, Respondent and his co-conspirator took out approximately \$622,228.38 in checks drawn
24 from the Orthomed bank account.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Acts Involving Dishonesty, Fraud, or Deceit)**

27 12. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
28 Code, in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to

1 substantially benefit himself, or substantially injure another when he co-conspired with others to
2 defraud the Medicare Program. Complainant refers to, and by this reference incorporates, the
3 allegations set forth above in paragraph 11, as though set forth fully

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Submit Fraudulent Claims)**

6 13. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the
7 Code, in that Respondent submitted fraudulent claims to Medicare. Complainant refers to, and by
8 this reference incorporates, the allegations set forth above in paragraph 11, as though set forth
9 fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Acts Warranting Denial of Licensure)**

12 14. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
13 Code, in that Respondent committed acts that would have warranted denial of his license.
14 Complainant refers to, and by this reference incorporates, the allegations set forth above in
15 paragraphs 11 through 13, inclusive, as though set forth fully.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

18 15. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
19 Code, in that Respondent committed acts of unprofessional conduct and/ or violated provisions of
20 the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
21 forth above in paragraphs 11 through 14, inclusive, as though set forth fully.

22 **PRAYER**

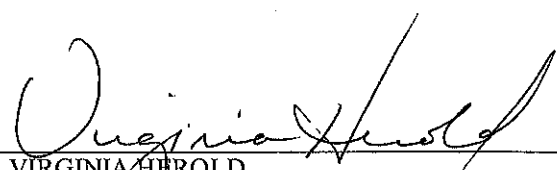
23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board issue a decision:

- 25 1. Revoking or suspending Intern Pharmacist Registration No. INT 26491, issued to
26 Vahe Tahmasian;
- 27 2. Ordering Vahe Tahmasian to pay the Board the reasonable costs of the investigation
28 and enforcement of this case, pursuant to section 125.3; and

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

DATED: 11/14/14



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

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11/12/14