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

11 In the Matter of the Accusation Against:
12
13 **JAVID JAVDANI**
2860 Angell Avenue
San Diego, CA 92122
14
15 **Pharmacist License No. RPH 46527**
16
Respondent.

Case No. 5492

A C C U S A T I O N

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

22 2. On or about August 16, 1993, the Board issued Pharmacist License Number RPH
23 46527 to Javid Javdani (Respondent). The Pharmacist License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on November 30, 2016, unless
25 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 (Code) unless otherwise
4 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
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
14 revoke a license on the ground that the licensee has been convicted of a crime substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 7. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a
19 board within the department pursuant to law to deny an application for a license or to
20 suspend or revoke a license or otherwise take disciplinary action against a person who
21 holds a license, upon the ground that the applicant or the licensee has been convicted
22 of a crime substantially related to the qualifications, functions, and duties of the
23 licensee in question, the record of conviction of the crime shall be conclusive
24 evidence of the fact that the conviction occurred, but only of that fact, and the board
25 may inquire into the circumstances surrounding the commission of the crime in order
26 to fix the degree of discipline or to determine if the conviction is substantially related
27 to the qualifications, functions, and duties of the licensee in question.

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

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1 8. Section 4301 of the Code states:

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

6

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

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

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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).

(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.

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

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

6 COSTS

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

13 FIRST CAUSE FOR DISCIPLINE

14 (July 7, 2015 Criminal Conviction for Crimes that are Substantially Related to the 15 qualifications, functions, or duties of a Pharmacist)

16 12. Respondent has subjected his license to discipline under sections 490 and 4301,
17 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
18 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

19 13. On or about July 7, 2015, in a criminal proceeding entitled *People of the State of*
20 *California v. Javid Javdani*, in San Diego County Superior Court, case number SCD235497,
21 Respondent was convicted on his plea of guilty to two counts of violating Insurance Code section
22 11760, subdivision (a), Misrepresenting a Fact to Obtain Workers Compensation Insurance, and
23 one count of Unemployment Insurance Code section 2117.5, Failure to File a Return in a Timely
24 Manner, all misdemeanors. As a result of a plea agreement, the court dismissed one count each of
25 Failure to Pay Tax (Insurance Code, § 2118.5), and Grand Theft of Personal Property, in violation
26 of Penal Code section 487(a)).

27 14. As a result of the conviction, Respondent was sentenced to a term of one year in local
28 jail for each count, to run consecutively, and imposition of each sentence was suspended.

1 Respondent was placed on three years probation and was ordered to pay \$350,000 in restitution
2 to three entities. The first installment of \$100,000 was paid by December 31, 2015, and the
3 balance of \$250,000 is to be paid on or before April 7, 2016, the date for Respondent's
4 sentencing. Respondent was further ordered to complete 120 hours of community service by
5 December 31, 2015.

6 15. The facts that led to the convictions are that Respondent is the owner of a two
7 businesses, the Balboa International Market and Sufi Mediterranean Cuisine, located in San
8 Diego, California. As owner of these businesses, Respondent was in charge of compliance with
9 California's laws requiring a businesses to make honest and complete disclosures to their
10 insurance carriers for the purpose of determining a premium, rate, or cost of insurance, under
11 Insurance Code section 11760, subsection (a).

12 16. From on or about June 10, 2011, through June 10, 2012, and again from June 10,
13 2012 through January 11, 2013, Respondent paid his employees in cash for their overtime wages.
14 These overtime cash payments were not reported to the California Employment Development
15 Department (EDD) and the worker's compensation insurance carriers who insured Respondent's
16 businesses. The failure to report these overtime wages resulted in lower worker's compensation
17 premiums paid to the insurance carriers and lower taxes paid to the EDD.

18 17. From on or about January 1, 2008, through June 30, 2014, Respondent filed tax
19 returns with the EDD for his two businesses. These tax returns required Respondent to file honest
20 and complete tax returns with the EDD. Respondent's failure to report his overtime cash
21 payments to his employees reduced his tax liability and constituted a violation of Unemployment
22 Insurance Code section 2117.5.

23 SECOND CAUSE FOR DISCIPLINE

24 (The Commission of an Act Dishonesty, Fraud, or Deceit)

25 18. Respondent has subjected his license to discipline under section 4301, subdivision (f),
26 of the Code for unprofessional conduct in that Respondent committed acts of dishonesty, fraud, or
27 deceit when he falsely misrepresented facts to his insurance carriers in order to pay lower
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1 insurance premiums and failed to report all of his employees' wages to the EDD in order to
2 reduce his tax liability, as described in paragraphs 13 through 17.

3 PRAYER

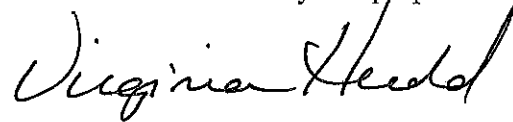
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 46527, issued to Javid
7 Javidani;

8 2. Ordering Javid Javidani to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12
13 DATED: 3/18/16



14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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