

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

In the Matter of the Accusation Against:

Case No. 3456

ASHKAN KHABAZIAN
11097 Scripps Ranch Blvd.
San Diego, CA 92131

Pharmacist License No. RPH 55204

Respondent.

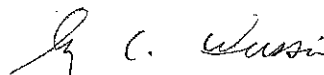
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 15, 2013.

It is so ORDERED on January 16, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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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 First Amended Accusation
12 Against:

13 **ASHKAN KHABAZIAN**

14 Pharmacist License No. RPH 55204

15 Respondent.
16

Case No. 3456

OAH No. 2011080864

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
19 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
20 be submitted to the Board for approval and adoption as the final disposition of the First Amended
21 Accusation.

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Kamala
25 D. Harris, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney
26 General.

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1 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
2 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
3 and the Board shall not be disqualified from further action by having considered this matter.

4 15. The parties understand and agree that copies of this Stipulated Settlement and
5 Disciplinary Order, including the signatures thereto, shall have the same force and effect as the
6 originals.

7 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
8 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
9 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
10 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
11 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
12 writing executed by an authorized representative of each of the parties.

13 17. In consideration of the foregoing admissions and stipulations, the parties agree that
14 the Board may, without further notice or formal proceeding, issue and enter the following
15 Disciplinary Order:

16 **DISCIPLINARY ORDER**

17 **IT IS HEREBY ORDERED** that Pharmacist License No. RPH 55204 issued to
18 Respondent Ashkan Khabazian is revoked. However, the revocation is stayed and Respondent is
19 placed on probation for five (5) years on the following terms and conditions.

20 1. **Obey All Laws**

21 Respondent shall obey all state and federal laws and regulations.

22 Respondent shall report any of the following occurrences to the board, in writing, within
23 seventy-two (72) hours of such occurrence:

- 24 • an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws
- 27 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
28 criminal complaint, information or indictment

- 1 • a conviction of any crime
2 • discipline, citation, or other administrative action filed by any state or federal agency
3 which involves respondent's pharmacist license or which is related to the practice of
4 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
5 for any drug, device or controlled substance.

6 Failure to timely report such occurrence shall be considered a violation of probation.

7 **2. Report to the Board**

8 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
9 designee. The report shall be made either in person or in writing, as directed. Among other
10 requirements, respondent shall state in each report under penalty of perjury whether there has
11 been compliance with all the terms and conditions of probation. Failure to submit timely reports
12 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
13 in submission of reports as directed may be added to the total period of probation. Moreover, if
14 the final probation report is not made as directed, probation shall be automatically extended until
15 such time as the final report is made and accepted by the board.

16 **3. Interview with the Board**

17 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
18 with the board or its designee, at such intervals and locations as are determined by the board or its
19 designee. Failure to appear for any scheduled interview without prior notification to board staff,
20 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
21 the period of probation, shall be considered a violation of probation.

22 **4. Cooperate with Board Staff**

23 Respondent shall cooperate with the board's inspection program and with the board's
24 monitoring and investigation of respondent's compliance with the terms and conditions of his
25 probation. Failure to cooperate shall be considered a violation of probation.

26 **5. Continuing Education**

27 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
28 pharmacist as directed by the board or its designee.

1 **6. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in First Amended Accusation Case Number 3456 and the terms,
4 conditions and restrictions imposed on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in First Amended Accusation Case Number 3456, and
10 terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his
11 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in First Amended Accusation
15 Case Number 3456 in advance of the respondent commencing work at each licensed entity. A
16 record of this notification must be provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in First Amended
21 Accusation Case Number 3456 and the terms and conditions imposed thereby. It shall be
22 respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
23 acknowledgment(s) to the board.

24 Failure to timely notify present or prospective employer(s) or to cause that/those
25 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
26 probation.

27 "Employment" within the meaning of this provision shall include any full-time,
28 part-time, temporary, relief or pharmacy management service as a pharmacist or any

1 position for which a pharmacist license is a requirement or criterion for employment,
2 whether the respondent is an employee, independent contractor or volunteer.

3 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
4 **Designated Representative-in-Charge, or Serving as a Consultant**

5 During the period of probation, respondent shall not supervise any intern pharmacist, be the
6 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
7 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
8 unauthorized supervision responsibilities shall be considered a violation of probation.

9 **8. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, respondent shall pay to the
11 board its costs of investigation and prosecution in the amount of \$10,000. The payment(s) shall
12 be made as follows: minimum monthly payments of \$175.44, due to the board by the 5th of each
13 month, until the \$10,000 is paid in full, the final payment being due three (3) months before
14 probation is scheduled to terminate.

15 There shall be no deviation from this schedule absent prior written approval by the board or
16 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
17 probation.

18 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
19 reimburse the board its costs of investigation and prosecution.

20 **9. Probation Monitoring Costs**

21 Respondent shall pay any costs associated with probation monitoring as determined by the
22 board each and every year of probation. Such costs shall be payable to the board on a schedule as
23 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
24 be considered a violation of probation.

25 **10. Status of License**

26 Respondent shall, at all times while on probation, maintain an active, current license with
27 the board, including any period during which suspension or probation is tolled. Failure to
28 maintain an active, current license shall be considered a violation of probation.

1 If respondent's license expires or is cancelled by operation of law or otherwise at any time
2 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
3 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
4 probation not previously satisfied.

5 **11. License Surrender While on Probation/Suspension**

6 Following the effective date of this decision, should respondent cease practice due to
7 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
8 respondent may tender his license to the board for surrender. The board or its designee shall have
9 the discretion whether to grant the request for surrender or take any other action it deems
10 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
11 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
12 record of discipline and shall become a part of the respondent's license history with the board.

13 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
14 the board within ten (10) days of notification by the board that the surrender is accepted.
15 Respondent may not reapply for any license from the board for three (3) years from the effective
16 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
17 of the date the application for that license is submitted to the board, including any outstanding
18 costs.

19 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
20 **Employment**

21 Respondent shall notify the board in writing within ten (10) days of any change of
22 employment. Said notification shall include the reasons for leaving, the address of the new
23 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
24 shall further notify the board in writing within ten (10) days of a change in name, residence
25 address, mailing address, or phone number.

26 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
27 phone number(s) shall be considered a violation of probation.

28

1 **13. Tolling of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
4 month during which this minimum is not met shall toll the period of probation, i.e., the period of
5 probation shall be extended by one month for each month during which this minimum is not met.
6 During any such period of tolling of probation, respondent must nonetheless comply with all
7 terms and conditions of probation.

8 Should respondent, regardless of residency, for any reason (including vacation) cease
9 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
10 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
11 must further notify the board in writing within ten (10) days of the resumption of practice. Any
12 failure to provide such notification(s) shall be considered a violation of probation.

13 It is a violation of probation for respondent's probation to remain tolled pursuant to the
14 provisions of this condition for a total period, counting consecutive and non-consecutive months,
15 exceeding thirty-six (36) months.

16 "Cessation of practice" means any calendar month during which respondent is
17 not practicing as a pharmacist for at least 40 hours, as defined by Business and
18 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
19 month during which respondent is practicing as a pharmacist for at least 40 hours as a
20 pharmacist as defined by Business and Professions Code section 4000 et seq.

21
22 **14. Violation of Probation**

23 If a respondent has not complied with any term or condition of probation, the board shall
24 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
25 all terms and conditions have been satisfied or the board has taken other action as deemed
26 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
27 to impose the penalty that was stayed.

28

1 If respondent violates probation in any respect, the board, after giving respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
4 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
5 a petition to revoke probation or an accusation is filed against respondent during probation, the
6 board shall have continuing jurisdiction and the period of probation shall be automatically
7 extended until the petition to revoke probation or accusation is heard and decided.

8 **15. Completion of Probation**

9 Upon written notice by the board or its designee indicating successful completion of
10 probation, respondent's license will be fully restored.

11 **16. Mental Health Examination**

12 Within thirty (30) days of the effective date of this decision, and on a periodic basis as may
13 be required by the board or its designee, respondent shall undergo, at his own expense,
14 psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health
15 practitioner. The approved evaluator shall be provided with a copy of the board's Accusation and
16 decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a
17 current diagnosis and a written report regarding the respondent's judgment and ability to function
18 independently as a pharmacist with safety to the public. Respondent shall comply with all the
19 recommendations of the evaluator if directed by the board or its designee.

20 If the evaluator recommends, and the board or its designee directs, respondent shall
21 undergo psychotherapy. Within thirty (30) days of notification by the board that a
22 recommendation for psychotherapy has been accepted, respondent shall submit to the board or its
23 designee, for prior approval, the name and qualification of a licensed mental health practitioner of
24 respondent's choice. Within thirty (30) days of approval thereof by the board, respondent shall
25 submit documentation to the board demonstrating the commencement of psychotherapy with the
26 approved licensed mental health practitioner. Should respondent, for any reason, cease treatment
27 with the approved licensed mental health practitioner, respondent shall notify the board
28 immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a

1 replacement licensed mental health practitioner of respondent's choice to the board for its prior
2 approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to
3 the board demonstrating the commencement of psychotherapy with the approved replacement.
4 Failure to comply with any requirement or deadline stated by this paragraph shall be considered a
5 violation of probation.

6 Upon approval of the initial or any subsequent licensed mental health practitioner,
7 respondent shall undergo and continue treatment with that therapist, at respondent's own expense,
8 until the therapist recommends in writing to the board, and the board or its designee agrees by
9 way of a written notification to respondent, that no further psychotherapy is necessary. Upon
10 receipt of such recommendation from the treating therapist, and before determining whether to
11 accept or reject said recommendation, the board or its designee may require respondent to
12 undergo, at respondent's expense, a mental health evaluation by a separate board-appointed or
13 board-approved evaluator. If the approved evaluator recommends that respondent continue
14 psychotherapy, the board or its designee may require respondent to continue psychotherapy.

15 Psychotherapy shall be at least once a week unless otherwise approved by the board.
16 Respondent shall provide the therapist with a copy of the board's Accusation and decision no
17 later than the first therapy session. Respondent shall take all necessary steps to ensure that the
18 treating therapist submits written quarterly reports to the board concerning respondent's fitness to
19 practice, progress in treatment, and other such information as may be required by the board or its
20 designee.

21 If at any time the approved evaluator or therapist determines that respondent is unable to
22 practice safely or independently as a pharmacist, the licensed mental health practitioner shall
23 notify the board immediately by telephone and follow up by written letter within three (3)
24 working days. Upon notification from the board or its designee of this determination, respondent
25 shall be automatically suspended and shall not resume practice until notified by the board that
26 practice may be resumed.

27 If recommended by the evaluating licensed mental health practitioner and approved by the
28 board, respondent shall be suspended from practicing pharmacy until respondent's treating

1 therapist recommends, in writing, stating the basis therefor, that respondent can safely practice
2 pharmacy, and the board or its designee approves said recommendation.

3 During suspension, respondent shall not enter any pharmacy area or any portion of the
4 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
5 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
6 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
7 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
8 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
9 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
10 and controlled substances. Respondent shall not resume practice until notified by the board.

11 During suspension, respondent shall not engage in any activity that requires the
12 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
13 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
14 designated representative for any entity licensed by the board.

15 Subject to the above restrictions, respondent may continue to own or hold an interest in any
16 licensed premises in which he holds an interest at the time this decision becomes effective unless
17 otherwise specified in this order.

18 Failure to comply with this suspension shall be considered a violation of probation.

19 **17. Medical Evaluation**

20 Within thirty (30) days of the effective date of this decision, and on a periodic basis
21 thereafter as may be required by the board or its designee, respondent shall undergo a medical
22 evaluation, at respondent's own expense, by a board-appointed or board-approved physician who
23 shall furnish a medical report to the board. The approved physician shall be provided with a copy
24 of the board's Accusation and decision. A record of this notification must be provided to the
25 board upon request. Respondent shall sign a release authorizing the physician to furnish the
26 board with a current diagnosis and a written report regarding the respondent's ability to function
27 independently as a pharmacist with safety to the public. Respondent shall comply with all the
28 recommendations of the physician if directed by the board or its designee.

1 If the physician recommends, and the board or its designee directs, that respondent undergo
2 medical treatment, respondent shall, within thirty (30) days of written notice from the board,
3 submit to the board or its designee, for prior approval, the name and qualifications of a licensed
4 physician of respondent's choice. Within thirty (30) days of approval thereof, respondent shall
5 submit documentation to the board demonstrating the commencement of treatment with the
6 approved physician. Should respondent, for any reason, cease treatment with the approved
7 physician, respondent shall notify the board immediately and, within thirty (30) days of ceasing
8 treatment, submit the name of a replacement physician of respondent's choice to the board or its
9 designee for prior approval. Within thirty (30) days of approval thereof, respondent shall submit
10 documentation to the board demonstrating the commencement of treatment with the approved
11 replacement. Failure to comply with any deadline stated by this paragraph shall be considered a
12 violation of probation.

13 Upon approval of the initial or any subsequent physician, respondent shall undergo and
14 continue treatment with that physician, at respondent's own expense, until the treating physician
15 recommends in writing to the board, and the board or its designee agrees by way of a written
16 notification to respondent, that no further treatment is necessary. Upon receipt of such
17 recommendation from the treating physician, and before determining whether to accept or reject
18 said recommendation, the board or its designee may require respondent to undergo, at
19 respondent's own expense, a medical evaluation by a separate board-appointed or board-approved
20 physician. If the approved evaluating physician recommends that respondent continue treatment,
21 the board or its designee may require respondent to continue treatment.

22 Respondent shall take all necessary steps to ensure that any treating physician submits
23 written quarterly reports to the board concerning respondent's fitness to practice, progress in
24 treatment, and other such information as may be required by the board or its designee.

25 If at any time an approved evaluating physician or respondent's approved treating physician
26 determines that respondent is unable to practice safely or independently as a pharmacist, the
27 evaluating or treating physician shall notify the board immediately by telephone and follow up by
28 written letter within three (3) working days. Upon notification from the board or its designee of

1 this determination, respondent shall be automatically suspended and shall not resume practice
2 until notified by the board that practice may be resumed.

3 During suspension, respondent shall not enter any pharmacy area or any portion of the
4 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
5 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
6 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
7 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
8 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
9 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
10 and controlled substances. Respondent shall not resume practice until notified by the board.

11 During suspension, respondent shall not engage in any activity that requires the
12 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
13 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
14 designated representative for any entity licensed by the board.

15 Subject to the above restrictions, respondent may continue to own or hold an interest in any
16 licensed premises in which he holds an interest at the time this decision becomes effective unless
17 otherwise specified in this order.

18 Failure to comply with this suspension shall be considered a violation of probation.

19 If recommended by the evaluating physician and approved by the board, respondent shall
20 be suspended from practicing pharmacy until the treating physician recommends, in writing,
21 stating the basis therefor, that respondent can safely and independently resume the practice of a
22 pharmacist, and the board or its designee approves said recommendation. Respondent shall not
23 resume practice until notified by the board that practice may be resumed.

24 During suspension, respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
26 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
27 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
28 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

1 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
2 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
3 and controlled substances. Respondent shall not resume practice until notified by the board.

4 During suspension, respondent shall not engage in any activity that requires the
5 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
6 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
7 designated representative for any entity licensed by the board.

8 Subject to the above restrictions, respondent may continue to own or hold an interest in any
9 licensed premises in which he holds an interest at the time this decision becomes effective unless
10 otherwise specified in this order.

11 Failure to comply with this suspension shall be considered a violation of probation.

12 **18. Random Drug Screening**

13 Respondent, at his own expense, shall participate in random testing, including but not
14 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
15 screening program as directed by the board or its designee. Respondent may be required to
16 participate in testing for the entire probation period and the frequency of testing will be
17 determined by the board or its designee. At all times, respondent shall fully cooperate with the
18 board or its designee, and shall, when directed, submit to such tests and samples for the detection
19 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
20 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
21 of probation. Upon request of the board or its designee, respondent shall provide documentation
22 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
23 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
24 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
25 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
26 shall be considered a violation of probation and shall result in the automatic suspension of
27 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
28 notified by the board in writing.

1 During suspension, respondent shall not enter any pharmacy area or any portion of the
2 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
3 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
4 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
5 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
6 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
7 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
8 and controlled substances. Respondent shall not resume practice until notified by the board.

9 During suspension, respondent shall not engage in any activity that requires the
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
12 designated representative for any entity licensed by the board.

13 Subject to the above restrictions, respondent may continue to own or hold an interest in any
14 licensed premises in which he holds an interest at the time this decision becomes effective unless
15 otherwise specified in this order.

16 Failure to comply with this suspension shall be considered a violation of probation.

17 **19. Abstain from Drugs and Alcohol Use**

18 Respondent shall completely abstain from the possession or use of alcohol, controlled
19 substances, dangerous drugs and their associated paraphernalia except when the drugs are
20 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
21 request of the board or its designee, respondent shall provide documentation from the licensed
22 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
23 treatment of the respondent. Failure to timely provide such documentation shall be considered a
24 violation of probation. Respondent shall ensure that he is not in the same physical location as
25 individuals who are using illicit substances even if respondent is not personally ingesting the
26 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
27 not supported by the documentation timely provided, and/or any physical proximity to persons
28 using illicit substances, shall be considered a violation of probation.

1 **20. Prescription Coordination and Monitoring of Prescription Use**

2 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
3 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
4 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
5 history with the use of alcohol, controlled substances, and/or dangerous drugs, and who will
6 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled
7 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
8 the board's Accusation and decision. A record of this notification must be provided to the board
9 upon request. Respondent shall sign a release authorizing the practitioner to communicate with
10 the board about respondent's treatment(s). The coordinating physician, nurse practitioner,
11 physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of
12 probation regarding respondent's compliance with this condition. If any substances considered
13 addictive have been prescribed, the report shall identify a program for the time limited use of any
14 such substances. The board may require that the single coordinating physician, nurse practitioner,
15 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in
16 addictive medicine. Should respondent, for any reason, cease supervision by the approved
17 practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing
18 treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or
19 psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
20 timely submit the selected practitioner or replacement practitioner to the board for approval, or to
21 ensure the required reporting thereby on the quarterly reports, shall be considered a violation of
22 probation.

23 If at any time an approved practitioner determines that respondent is unable to practice
24 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
25 telephone and follow up by written letter within three (3) working days. Upon notification from
26 the board or its designee of this determination, respondent shall be automatically suspended and
27 shall not resume practice until notified by the board that practice may be resumed.

28 During suspension, respondent shall not enter any pharmacy area or any portion of the

1 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
2 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
3 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
4 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
5 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
6 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
7 and controlled substances. Respondent shall not resume practice until notified by the board.

8 During suspension, respondent shall not engage in any activity that requires the
9 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
10 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
11 designated representative for any entity licensed by the board.

12 Subject to the above restrictions, respondent may continue to own or hold an interest in any
13 licensed premises in which he holds an interest at the time this decision becomes effective unless
14 otherwise specified in this order.

15 Failure to comply with this suspension shall be considered a violation of probation.

16 **21. No Ownership of Licensed Premises**

17 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
18 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
19 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
20 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
21 days following the effective date of this decision and shall immediately thereafter provide written
22 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
23 documentation thereof shall be considered a violation of probation.

24 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
25 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
26 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
27 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
28 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently

1 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
2 that interest, but only to the extent of that position or interest as of the effective date of this
3 decision. Violation of this restriction shall be considered a violation of probation.

4 **22. Ethics Course**

5 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
6 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
7 Failure to initiate the course during the first year of probation, and complete it within the second
8 year of probation, is a violation of probation.

9 Respondent shall submit a certificate of completion to the board or its designee within five
10 days after completing the course.

11 **23. Pharmacists Recovery Program (PRP)**

12 Within thirty (30) days of the effective date of this decision, respondent shall contact the
13 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
14 successfully participate in, and complete the treatment contract and any subsequent addendums as
15 recommended and provided by the PRP and as approved by the board or its designee. The costs
16 for PRP participation shall be borne by the respondent.

17 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
18 the effective date of this decision is no longer considered a self-referral under Business and
19 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
20 his current contract and any subsequent addendums with the PRP.

21 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
22 the treatment contract and/or any addendums, shall be considered a violation of probation.

23 Probation shall be automatically extended until respondent successfully completes the PRP.
24 Any person terminated from the PRP program shall be automatically suspended by the board.
25 Respondent may not resume the practice of pharmacy until notified by the board in writing.

26 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
27 licensed practitioner as part of a documented medical treatment shall result in the automatic
28 suspension of practice by respondent and shall be considered a violation of probation.

1 Respondent may not resume the practice of pharmacy until notified by the board in writing.

2 During suspension, respondent shall not enter any pharmacy area or any portion of the
3 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
4 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
5 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
6 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
7 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
8 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
9 and controlled substances. Respondent shall not resume practice until notified by the board.

10 During suspension, respondent shall not engage in any activity that requires the
11 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
12 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
13 designated representative for any entity licensed by the board.

14 Subject to the above restrictions, respondent may continue to own or hold an interest in any
15 licensed premises in which he holds an interest at the time this decision becomes effective unless
16 otherwise specified in this order.

17 Failure to comply with this suspension shall be considered a violation of probation.

18 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
19 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid
20 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

21 Respondent shall work in a pharmacy setting with access to controlled substances for six
22 (6) consecutive months before successfully completing probation. If respondent fails to do so,
23 probation shall be automatically extended until this condition has been met. Failure to satisfy this
24 condition within six (6) months beyond the original date of expiration of the term of probation
25 shall be considered a violation of probation.

26 **24. Supervised Practice**

27 During the period of probation, respondent shall practice only under the supervision of a
28 licensed pharmacist not on probation with the board. Upon and after the effective date of this

1 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
2 until a supervisor is approved by the board or its designee. The supervision shall be, as required
3 by the board or its designee, either:

4 Continuous – At least 75% of a work week

5 Substantial - At least 50% of a work week

6 Partial - At least 25% of a work week

7 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

8 Within thirty (30) days of the effective date of this decision, respondent shall have his
9 supervisor submit notification to the board in writing stating that the supervisor has read the
10 decision in First Amended Accusation Case Number 3456 and is familiar with the required level
11 of supervision as determined by the board or its designee. It shall be the respondent's
12 responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit
13 timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the
14 pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a
15 violation of probation.

16 If respondent changes employment, it shall be the respondent's responsibility to ensure that
17 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
18 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
19 commences, submit notification to the board in writing stating the direct supervisor and
20 pharmacist-in-charge have read the decision in First Amended Accusation Case Number 3456
21 and is familiar with the level of supervision as determined by the board. Respondent shall not
22 practice pharmacy and his license shall be automatically suspended until the board or its designee
23 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
24 submit timely acknowledgements to the board shall be considered a violation of probation.

25 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

26 During suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
4 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and controlled substances. Respondent shall not resume practice until notified by the board.

6 During suspension, respondent shall not engage in any activity that requires the
7 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
8 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
9 designated representative for any entity licensed by the board.

10 Subject to the above restrictions, respondent may continue to own or hold an interest in any
11 licensed premises in which he holds an interest at the time this decision becomes effective unless
12 otherwise specified in this order.

13 Failure to comply with this suspension shall be considered a violation of probation.

14

15 ACCEPTANCE

16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Peter S. Gregorovic, Esq. I understand the stipulation and the
18 effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the Board of Pharmacy.

21

22 DATED: 12/5/12



ASHKAN KHABAZIAN
Respondent

23

24 I have read and fully discussed with Respondent Ashkan Khabazian the terms and
25 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

26 I approve its form and content.

27 DATED: 12/10/12



PETER S. GREGOROVIC, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 12-11-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES LEDAKIS
Supervising Deputy Attorney General



RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 3456

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 3456

13 ASHKAN KHABAZIAN
10973 Waterton Road
14 San Diego, CA 92131

FIRST AMENDED ACCUSATION

15 Pharmacist License No. RPH 55204

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about November 7, 2003, the Board of Pharmacy issued Pharmacist License
24 Number RPH 55204 to Ashkan Khabazian (Respondent). The Pharmacist License was in full
25 force and effect at all times relevant to the charges brought herein, and will expire on
26 September 30, 2011, unless renewed.

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28 ///

1 JURISDICTION

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

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

11 STATUTORY PROVISIONS

12 6. Section 482 of the Code states:

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

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

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

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

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

23 8. Section 493 of the Code states:

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

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

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

7 9. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
12 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
13 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
14 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
15 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
16 section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
19 practitioner, or physician assistant, when in stock in containers correctly labeled
20 with the name and address of the supplier or producer.

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

24 10. Section 4301 of the Code states:

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

....

(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.

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

(h) The administering to oneself, of any controlled substance, or the use of
any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
dangerous or injurious to oneself, to a person holding a license under this chapter,
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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.....
(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.
.....

(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.
.....

11. Health and Safety Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

12. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

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13. Health and Safety Code section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

....

14. Health and Safety Code section 11375(b)(2) provides that every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

REGULATORY PROVISIONS

15. 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.

16. 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).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 **COST RECOVERY**

5 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **DRUGS AT ISSUE**

10 18. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance
11 as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant
12 to Business and Professions Code section 4022.

13 19. Dilaudid is a Schedule II controlled substance pursuant to Health and Safety Code
14 section 11055(b)(1)(k) and a dangerous drug under Business and Professions Code section 4022.
15 Dilaudid is a brand name for the generic drug Hydromorphone and is used to treat pain.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(November 13, 2008 Conviction for DUI on June 9, 2007)**

18 20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
19 Code in that he was convicted of crime that is substantially related to the qualifications, duties,
20 and functions of a pharmacist. The circumstances are as follows:

21 a. On or about February 28, 2008, in a criminal proceeding entitled *People of the*
22 *State of California v. Ashkan Khabazian*, in San Diego County Superior Court, case number
23 M042101, Respondent was charged with violation of Vehicle Code section 23152(a), driving
24 under the influence of alcohol, violation of Vehicle Code section 23152(b), driving while having
25 a measurable blood alcohol level of .08% or more, and violation of Health and Safety Code
26 section 11375(b)(2), possession without a prescription of a controlled substance.

27 b. On or about November 13, 2008, Respondent pled no contest to a misdemeanor
28 violation of Vehicle Code section 23152(a), driving under the influence of alcohol. As a result of

1 the plea agreement, the remaining counts were dismissed. As a result of the conviction, on or
2 about November 13, 2008, Respondent was sentenced to five years summary probation, ordered
3 to pay a total fine of \$2,062, and ordered to enroll and complete a first conviction program and a
4 MADD program.

5 c. The facts that led to the conviction were that on or about June 9, 2007, an officer
6 of the San Diego Police Department observed a white Mercedes leave a parking stall and circle
7 around in a dark parking lot without the headlights on. After witnessing the vehicle pass the
8 parking lot exit a few times, the officer initiated a traffic stop. The driver of the vehicle identified
9 himself as Respondent. As he spoke with Respondent, the officer observed symptoms of
10 intoxication. Another San Diego Police Department officer arrived at the scene and noticed that
11 Respondent was talking as if his tongue was swollen or thick, and his eyes lacked a smooth
12 pursuit.

13 d. After one of the officers instructed Respondent to perform a field sobriety test,
14 Respondent attempted the test and then stated that he did not want to continue with the test, the
15 officer placed Respondent under arrest. Respondent was searched and the officer found two half
16 pills in Respondent's pant's pocket. One of the pills was white and half round and the other was
17 orange and oblong. When questioned by the officer, Respondent stated that he did not know what
18 they were. The officer believed the pills that he found in Respondent's pocket were Lorazepam
19 and Adderall. Subsequent lab results confirmed that one of the pills was Lorazepam.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct– Use of Alcohol in a Manner Dangerous to Self or Others)**

22 21. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
23 on or about June 9, 2007, Respondent used alcohol to an extent or in a manner which was
24 dangerous to himself or others, as is set forth above in paragraph 20, above, which is incorporated
25 herein by reference as though fully set forth.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct– Violating State Laws Regulating Controlled Substances)**

3 22. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301(j) of the Code in that on or about June 9, 2007, Respondent unlawfully possessed a
5 controlled substance, Lorazepam, without a prescription, in violation of Code section 4060 and
6 the California Uniform Controlled Substances Act (Health and Safety Code § 11375(b)(2)), as
7 detailed in paragraph 20, above, which is incorporated herein by reference.

8
9 **FACTUAL ALLEGATIONS– SCRIPPS MERCY HOSPITAL**

10 23. Between 3/21/09 and 8/26/09, Respondent was employed as a pharmacist by Scripps
11 Mercy Hospital in San Diego, California. On at least five different occasions from 3/21/09 to
12 8/26/09, while working as a pharmacist at Scripps Mercy Hospital-San Diego, Respondent
13 furnished himself the controlled substance Hydromorphone (Dilaudid) from his employer,
14 without prescription or authorization, as follows:

15 24. Patient KF:

16 a. On March 21, 2009, at 10:05 hours, Respondent withdrew for this patient from
17 Scripps Mercy Hospital's Pyxis¹ machine, one vial of 2 mg. Hydromorphone, without a
18 Physician's Order. In addition, there is no indication in the patient's Medication Administration
19 Record (MAR) that the medication withdrawn was administered.

20 b. On March 21, 2009, at 10:08 hours, Respondent withdrew for this patient from
21 Scripps Mercy Hospital's Pyxis machine, one vial of 2 mg. Hydromorphone, without a
22 Physician's Order. In addition, there is no indication in the patient's Medication Administration
23 Record (MAR) that the medication withdrawn was administered.

24
25 ¹ Pyxis is a trade name for the automated single-unit dose medication dispensing system
26 that records information such as a patient name, physician orders, date and time medication was
27 withdrawn, and the name of the individual who withdrew and administered the medication. Each
28 user/operator is given a "user ID" code to operate the control panel. The user is required to enter
a second code "PIN" number similar to an ATM machine to gain access to the medications.

1 c. On March 21, 2009; at 19:01 hours, Respondent withdrew for this patient from
2 Scripps Mercy Hospital's Pyxis machine, two vials of 2 mg. Hydromorphone, without a
3 Physician's Order. In addition, there is no indication in the patient's Medication Administration
4 Record (MAR) that the medication withdrawn was administered.

5 25. Patient HR

6 a. On April 18, 2009, at 18:29 hours, Respondent, without a Physician's Order,
7 altered the standing prescription order for this patient from Hydromorphone 1 mg. IV (intra-
8 venous) every two hours PRN (as needed), to Hydromorphone 8 mg. IV every two hours PRN.

9 b. Then, at 18:34 hours on this same date, Respondent withdrew for this patient from
10 Scripps Mercy Hospital's Pyxis machine, four vials of 2 mg. Hydromorphone, without a
11 Physician's Order. In addition, there is no indication in the patient's Medication Administration
12 Record (MAR) that the medication withdrawn was administered.

13 26. Patient RW:

14 a. On May 14, 2009, at 08:25 hours, Respondent, without a Physician's Order,
15 altered the standing prescription order for this patient from Hydromorphone 1 mg. IV every four
16 hours PRN, to Hydromorphone 3 mg. IV "Now."

17 b. Then, at 08:25 hours on this same date, Respondent withdrew for this patient from
18 Scripps Mercy Hospital's Pyxis machine, one vial of 2 mg. Hydromorphone, without a
19 Physician's Order. In addition, there is no indication in the patient's Medication Administration
20 Record (MAR) that the medication withdrawn was administered.

21 c. Then, at 08:26 hours on this same date, Respondent withdrew for this patient from
22 Scripps Mercy Hospital's Pyxis machine, another vial of 2 mg. Hydromorphone, without a
23 Physician's Order. There is no indication in the patient's Medication Administration Record
24 (MAR) that the medication withdrawn was administered.

25 27. Patient BS:

26 a. On June 4, 2009, at 08:46 hours, Respondent withdrew for this patient from
27 Scripps Mercy Hospital's Pyxis machine, five vials of 2 mg. Hydromorphone, without a
28

1 Physician's Order. In addition, there is no indication in the patient's Medication Administration
2 Record (MAR) that the medication withdrawn was administered.

3 28. Patient BC:

4 a. On August 26, 2009, at 16:53 hours, Respondent withdrew for this patient from
5 Scripps Mercy Hospital's Pyxis machine, three vials of 2 mg. Hydromorphone, without a
6 Physician's Order, as the patient had already been discharged from the hospital and the order
7 inactivated.

8 29. In total, Respondent diverted 18 vials of Hydromorphone in regard to five different
9 patients, as set forth in paragraphs 23 through 28, above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct-- Acts Involving Dishonesty, Fraud or Deceit)**

12 30. Respondent is subject to disciplinary action for unprofessional conduct under section
13 4301(f) of the Code in that he committed acts involving dishonesty, fraud, or deceit, when he
14 diverted controlled substances from his employer, Scripps Mercy Hospital-San Diego, without
15 authorization or prescription, as alleged in paragraphs 23-29, above, which are incorporated
16 herein by reference.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct-- Violating State Laws Regulating Controlled Substances)**

19 31. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4301(j) of the Code in that he unlawfully possessed a controlled substance, Hydromorphone,
21 without a prescription, in violation of Code section 4060 and Health and Safety Code section
22 11350(a), as alleged in paragraphs 23-29, above, which are incorporated herein by reference.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct-- Violating State Laws Regulating Controlled Substances)**

25 32. Respondent is subject to disciplinary action for unprofessional conduct under section
26 4301(j) of the Code in that he unlawfully furnished himself with a controlled substance,
27 Hydromorphone, in violation of Health and Safety Code section 11170, as alleged in paragraphs
28 23-29, above, which are incorporated herein by reference.

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SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct– Violating State Laws Regulating Controlled Substances)

33. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code in that he obtained a controlled substance, Hydromorphone, by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173(a), as alleged in paragraphs 23-29, above, which are incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct– False Prescriptions)

34. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(g) of the Code in that he knowingly made or signed any certificate or other document that falsely represents the existence or nonexistence of a state of facts, when he entered false prescription orders for two different patients at Scripps Mercy Hospital-San Diego, as alleged in paragraphs 25 and 26, above, which are incorporated herein by reference.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct– Violating State Laws Regulating Controlled Substances)

35. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code when he entered false prescription orders for two different patients at Scripps Mercy Hospital-San Diego, in violation of Health and Safety Code section 11173(b), as alleged in paragraphs 25 and 26, above, which are incorporated herein by reference.

PRAYER

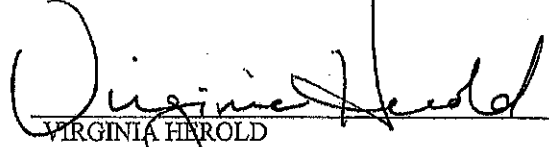
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 55204, issued to Ashkan Khabazian;
2. Ordering Ashkan Khabazian 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;

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

DATED: 7/14/11



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

SD2009804729

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Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

13 ASHKAN KHABAZIAN
10973 Waterton Road
14 San Diego, CA 92131

15 Pharmacist License No. RPH 55204

16 Respondent.

Case No. 3456

A C C U S A T I O N

17
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, Department of Consumer Affairs.

22 2. On or about November 7, 2003, the Board of Pharmacy issued Pharmacist License
23 Number RPH 55204 to Ashkan Khabazian (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on September
25 30, 2011, unless 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 unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

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

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

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

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

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

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

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

23 8. Section 493 of the Code states:

24
25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or
27 to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a 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,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

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

7 9. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
12 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
13 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
14 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
15 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
16 section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
19 practitioner, or physician assistant, when in stock in containers correctly labeled
20 with the name and address of the supplier or producer.

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

24 10. Section 4301 of the Code states:

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

.....

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

.....

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

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(1) 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.

11. Health and Safety Code section 11375(b)(2) provides that every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

REGULATORY PROVISIONS

12. 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.

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

....

1 (b) When considering the suspension or revocation of a facility or a
2 personal license on the ground that the licensee or the registrant has been
3 convicted of a crime, the board, in evaluating the rehabilitation of such person and
4 his present eligibility for a license will consider the following criteria:

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

11 **COST RECOVERY**

12 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **DRUG**

17 15. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance
18 as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant
19 to Business and Professions Code section 4022.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(November 13, 2008 Conviction for DUI on June 9, 2007)**

22 16. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
23 Code in that he was convicted of crime that is substantially related to the qualifications, duties,
24 and functions of a pharmacist. The circumstances are as follows:

25 a. On or about February 28, 2008, in a criminal proceeding entitled *People of the*
26 *State of California v. Ashkan Khabazian*, in San Diego County Superior Court, case number
27 M042101, Respondent was charged with violation of Vehicle Code section 23152(a), driving
28 under the influence of alcohol, violation of Vehicle Code section 23152(b), driving while having
a measurable blood alcohol level of .08% or more, and violation of Health and Safety Code
section 11375(b)(2), possession without a prescription of a controlled substance.

1 dangerous to himself or others, as is set forth above in paragraph 16, above, which is incorporated
2 herein by reference as though fully set forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Violating State Laws Regulating Controlled Substances)**

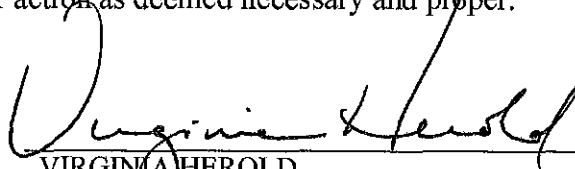
5 18. Respondent is subject to disciplinary action for unprofessional conduct under section
6 4301(j) of the Code in that on or about June 9, 2007, Respondent unlawfully possessed a
7 controlled substance, Lorazepam, in violation of Code section 4060 and/or the California
8 Uniform Controlled Substances Act (Health and Safety Code 11375(b)(2)), as detailed in
9 paragraph 16, above, which is incorporated herein by reference.

10
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacist License Number RPH 55204, issued to Ashkan
15 Khabazian Ashkan Khabazian.
- 16 2. Ordering Ashkan Khabazian to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 4/11/10


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

28 SD2009804729
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