

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

In the Matter of the Accusation Against:

SHAHRIAR ZARTOSHTI, Respondent

Pharmacist License No. RPH 66143

Agency Case No. 6532

OAH No. 2020050594

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on February 4, 2021.

It is so ORDERED on January 5, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name.

By

Greg Lippe
Board President

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PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on October 7, 2020, by video conference.

Stephani J. Lee, Deputy Attorney General, represented Complainant Anne Sodergren. There was no appearance by Respondent, despite notice to him of the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 7, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation and maintained this proceeding while acting in her official capacity of Interim Executive Officer, and then the Executive Officer of the Board of Pharmacy (Board).

2. On September 21, 2011, the Board issued Pharmacist License number RPH 66143 to Respondent Shahriar Zartoshti, authorizing him to practice pharmacy in California. Respondent's license is due to expire on September 30, 2021 unless renewed. Respondent has no history of discipline.

3. After he was served with the Accusation, Respondent filed a Notice of Defense, contesting the Accusation and requesting a hearing.

4. Respondent was notified of the hearing date, and of the fact that it would be held by video conference. Respondent sought a continuance of the hearing, which motion was denied. Respondent was duly noticed of the hearing, but failed to participate in the hearing.

5. All jurisdictional requirements have been met.

Respondent's Arrest and Possession of Controlled Substances

6. On May 31, 2018, at approximately 2:30 a.m., Respondent was observed by officers of the Redondo Beach Police Department (RBPd) while he was driving a car without license plates, in plain violation of the Vehicle Code. Respondent was alone in the vehicle when the RBPd officers stopped the vehicle because of the violation.

7. When Officer Harrison of the RBPd spoke to Respondent, the latter claimed that he was "Ubering." This piqued the officers' attention because the car, described as an older BMW sedan, did not have an Uber logo on the vehicle. Further, his cell phone was not open to the Uber mobile application. In the officers' experience, an Uber logo and open phone app would be expected of someone working as an Uber driver.

8. Officer Harrison noticed that Respondent had the vehicle's license plate; Respondent had taken it from the area between the center console and placed it on his lap. When asked why the plate was not affixed to the vehicle, Respondent said he had not had the time to do it.

9. The other officer asked Respondent to step out of the car, and when he did so Officer Harrison saw, in plain view, the orange cap to a hypodermic needle. Respondent gave the police consent to search his vehicle.

10. The officers searched Respondent's person and found a bottle containing 30 pills of U30 Amphetamine and 20 mg. Dextroamphetamine. Respondent did not have a prescription for those pills with him.

11. When Officer Harrison asked Respondent why he had the cap for a hypodermic needle Respondent claimed he was a diabetic. Upon further questioning, Respondent claimed he took insulin on an as-needed, as opposed to routine basis, and Harrison inferred that Respondent was trying to excuse possession of a hypodermic needle. Officer Harrison pressed Respondent about any illegal drug use, and Respondent admitted to having heroin and methamphetamine in his car.

12. A search of the vehicle yielded two syringes from the center console that each held a liquid later tested and found to be a heroin, just under 17 grams in weight.

In a dashboard storage compartment the police found three glass vials with an unknown substance, five more syringes, and a glass pipe of the type used to smoke drugs, which contained suspected methamphetamine. Other items, indicative of potential drug dealing were found in Respondent's vehicle. This included a beer can in the trunk, which had a hidden compartment; a cell phone with no serial number; and, \$257 in cash in various denominations.

13. Officer Harrison arrested Respondent.

Respondent's Criminal Court Proceeding

14. On August 22, 2018, Respondent was charged with three misdemeanors: a violation of Health and Safety Code section 11350, subdivision (a), possession of heroin; a violation of Health and Safety Code section 11364, subdivision (a), possession of an opium pipe or other paraphernalia to be used for smoking controlled substances; and, a violation of Business and Professions Code section 4060, unlawful possession of a controlled substance.

15. At his arraignment, held August 29, 2018, Respondent pled not guilty to all three charges.

16. A number of court hearings were held, with Respondent failing to appear at some proceedings, so that bench warrants were twice issued for his arrest. However, on May 6, 2019, Respondent appeared in court, and the court diverted the three charges against Respondent.

17. The charges were diverted for 12 months, on various conditions, including that Respondent complete an approved controlled substance abuse program, which the court found had already occurred. Respondent was required to

attend and complete 52 Narcotics Anonymous or Alcoholics Anonymous meetings. Respondent was required not to own, use or possess controlled substances without a valid prescription, and he was ordered not to use, own or possess related paraphernalia, or to associate with drug users. A further hearing was set for May 6, 2020, to review compliance.

18. According to Complainant's attorney, Respondent completed diversion in June 2020.

Other Findings

19. Heroin is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (c)(11), and it is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

20. Amphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(1), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

21. Aside from the admission by Complainant that Respondent completed his diversion program, there is no evidence of mitigation, extenuation, or rehabilitation for Respondent.

22. The Board has incurred costs of investigation and prosecution of this matter totaling \$5,026.25. That amount must be deemed reasonable on its face.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 4300, 4300.1, 4301, and 4011 was established pursuant to Factual Findings 1 through 5.

2. (A) In essence, Health and Safety Code section 11350, subdivision (a), criminalizes the possession of Schedule I drugs, as well as Schedule II drugs when the latter have not been properly prescribed by a physician and surgeon.

(B) On May 31, 2018, Respondent was in the unlawful possession of a Schedule I drug, Heroin, as well as Amphetamines, a Schedule II drug, the latter without a prescription, based on Factual Findings 6 through 12, 19 and 20.

(C) On May 31, 2018, Respondent violated Health and Safety Code section 11350, subdivision (a).

3. (A) Health and Safety Code section 11364, subdivision (a), makes it unlawful to possess an opium pipe or any device used for unlawfully smoking or injecting controlled substances including Heroin and Amphetamines.

(B) Based on Factual Findings 6 through 12 and 20, Respondent violated Health and Safety Code section 11364, subdivision (a), on May 31, 2018.

4. Business and Professions Code section 4060 makes it unlawful for anyone to possess a controlled substance unless it has been furnished upon the prescription of certain health professionals, such as a physician or dentist. On May 31, 2018, Respondent violated this statute by possessing controlled substances without a prescription, based on Factual Findings 6 through 12 and 19 and 20.

5. Cause was established to discipline Respondent's license pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), for his unlawful possession of controlled substances, Heroin and amphetamines, based on Legal Conclusions 2 and 4, and their factual predicates.

6. Cause was established to discipline Respondent's license pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), for his unlawful possession of a pipe or other paraphernalia used for unlawfully injecting or smoking controlled substances, based on Legal Conclusion 3 and its factual predicates.

7. The Board is entitled to recover its costs of investigation and prosecution pursuant to Business and Professions Code section 125.3, based on Legal Conclusions 4, 5, and 6. The reasonable amount of such costs is \$5,026.25.

8. (A) The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) The Board is obligated by statute to place public protection as its highest priority. (Bus. & Prof. Code, §4001.1.)

(B) Here the evidence establishes that less than two years ago Respondent was in possession of illegal drugs of the most pernicious type. There was circumstantial evidence that he was engaged in dealing those drugs. There is no evidence that he was under the influence of such drugs at the time of his arrest, but that does not rule out an inference that he was at times using heroin or amphetamines, in light of his possession of two loaded syringes of heroin, and his possession of a smoking pipe.

(C) Possession and/or use of heroin and amphetamines plainly implicates Respondent's fitness to practice pharmacy. As a licensee, he would have regular access to controlled substances, including amphetamines or similar drugs. Given his conduct in May 2018, there is no reason he should be entrusted with a pharmacist's license, absent substantial evidence of rehabilitation.

(D) Respondent failed to appear at the hearing where he might have provided evidence of rehabilitation. That he completed his one-year diversion program is not enough to establish rehabilitation for purposes of this proceeding. Given the entire record Respondent's license must be revoked, in order to protect the public.

ORDER

Pharmacist License Number RPH 66143, issued to Respondent Shahriar Zartoshti is hereby revoked.

DATE: 11/06/2020

Joseph Montoya
Joseph Montoya (Nov 6, 2020 09:02 PST)
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 6532

13 **SHAHRIAR ZARTOSHTI**

1281 9th Ave., #1215
14 San Diego, CA 92101

ACCUSATION

15 **Pharmacist License No. RPH 66143**

16 Respondent.
17

18
19 **PARTIES**

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

23 2. On or about September 21, 2011, the Board issued Pharmacist License Number RPH
24 66143 to Shahriar Zartoshti (Respondent). The Pharmacist License was in full force and effect at
25 all times relevant to the charges brought herein and will expire on September 30, 2021, unless
26 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 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Code sections 4000 *et seq.*] and the Uniform Controlled Substances Act
7 [Health & Safety Code sections 11000 *et seq.*].

8 5. Section 4300 of the Code states, in pertinent part, that “[e]very license issued may be
9 suspended or revoked.”

10 6. Section 4300.1 of the Code states:

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

15 **STATUTORY PROVISIONS**

16 7. Section 4022 of the Code states:

17 “Dangerous drug” or “dangerous device” means any drug or device unsafe for
18 self-use in humans or animals, and includes the following:

19 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
without prescription,” “Rx only,” or words of similar import.

20 (b) Any device that bears the statement: “Caution: federal law restricts this
21 device to sale by or on the order of a _____,” “Rx only,” or words of similar import,
the blank to be filled in with the designation of the practitioner licensed to use or
22 order use of the device.

23 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

24 8. Section 4060 of the Code states:

25 No person shall possess any controlled substance, except that furnished to a
26 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
27 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
28 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of

subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

9. Section 4301 states, in pertinent part:

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

...

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

...

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

10. Health and Safety Code section 11350 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), 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 a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

11. Health and Safety Code section 11364 states, in pertinent part:

(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

1 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

2 12. Amphetamine, its salts, optical isomers, and salts of its optical isomers, are a
3 Schedule II controlled substance as designated by Health and Safety Code section 11055,
4 subdivision (d)(1), and is categorized as a dangerous drug pursuant to Code section 4022.

5 13. Heroin is a Schedule I controlled substance as designated by Health and Safety Code
6 section 11054, subdivision (c)(11), and is categorized as a dangerous drug pursuant to Code
7 section 4022.

8 **COST RECOVERY**

9 14. Section 125.3 states, in pertinent part, that the Board may request the administrative
10 law judge to direct a licensee found to have committed a violation or violations of the licensing
11 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
12 case.

13 **FACTUAL ALLEGATIONS**

14 15. On or about May 31, 2018, officers from the Redondo Beach Police Department
15 observed Respondent driving a vehicle without license plates. Respondent was the sole occupant
16 in the vehicle. Upon initiating a traffic stop, the officers found a pill bottle containing thirty (30)
17 pills of amphetamine on Respondent's person. The officers additionally found the following
18 items in the vehicle: heroin; multiple syringes; a glass pipe containing suspected
19 methamphetamine; and other indicia consistent with drug use and sales.

20 16. Respondent admitted to the officers that he had heroin and methamphetamine in his
21 vehicle.

22 17. On or about August 22, 2018, Respondent was charged with one misdemeanor count
23 of violating Health and Safety Code section 11350(a) [unlawful possession of controlled
24 substance], one misdemeanor count of violating Health and Safety Code section 11364
25 [possession of drug paraphernalia], and one misdemeanor count of Business and Professions
26 Code section 4060 [unlawful possession of controlled substance] in the criminal proceeding
27 entitled *The People of the State of California v. Shariar Zartoshti* (Supr. Ct. Los Angeles County,
28 2018, No. 8TR04652). On or about May 6, 2019, the court granted pretrial diversion of the

1 charges for a period of twelve (12) months under certain terms and conditions. The criminal
2 proceeding is next scheduled in court on May 6, 2020 for pretrial hearing.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unlawful Possession of Controlled Substance)**

5 18. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
6 (j) and (o); in conjunction with Code section 4060 and Health and Safety Code section 11350,
7 subdivision (a); on the grounds of unprofessional conduct, in that Respondents unlawfully
8 possessed a controlled substance, specifically heroin. Complainant refers to, and by this
9 reference incorporates, the allegations set forth in above paragraphs 15 through 17, as though set
10 forth in full herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unlawful Possession of Controlled Substance)**

13 19. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
14 (j) and (o); in conjunction with Code section 4060; on the grounds of unprofessional conduct, in
15 that Respondents unlawfully possessed a controlled substance, specifically amphetamine.
16 Complainant refers to, and by this reference incorporates, the allegations set forth in above
17 paragraphs 15 through 17, as though set forth in full herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unlawful Possession of Drug Paraphernalia)**

20 20. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
21 (j) and (o); in conjunction with Health and Safety Code section 11364; on the grounds of
22 unprofessional conduct, in that Respondents possessed a device, contrivance, instrument, or
23 paraphernalia used for unlawfully injecting or smoking a controlled substance specified in Health
24 and Safety Code section 11364. Complainant refers to, and by this reference incorporates, the
25 allegations set forth in above paragraphs 15 through 17, as though set forth in full herein.

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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 66143, issued to Shahriar Zartoshti;
2. Ordering Shahriar Zartoshti 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: December 12, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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