

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

In the Matter of the Accusation Against:

AZITA ARBAB a.k.a. AZITA ARBAB-KALANTARI,

Pharmacist License No. RPH 47420,

RESPONDENT.

Agency Case No. 7581

OAH No. 2023080571

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 June 19, 2024.

It is so ORDERED on May 20, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

**BEFORE THE
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In the Matter of the Accusation Against:

AZITA ARBAB, a.k.a. AZITA ARBAB-KALANTARI, Respondent

Agency Case No. 7581

OAH No. 2023080571

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 29, 2024.

Dionne Mochon, Deputy Attorney General, represented complainant, Anne Sodergren, Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs, State of California.

Herbert L. Weinberg, Attorney at Law, represented respondent Azita Arbab, a.k.a. Azita Arbab-Kalantari, who was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 29, 2024.

SUMMARY

Complainant seeks the revocation of respondent's pharmacist license based upon allegations that she failed to comply with the board's order pursuant to Business and Professions Code section 820 (section 820 order) issued December 2, 2022, to undergo a mental and/or physical examination to determine whether she is impaired due to a mental and/or physical illness affecting her fitness to practice. The evidence presented established that respondent failed to cooperate with the board's section 820 order. Pursuant to Business and Professions Code section 821 respondent's pharmacist license is revoked.

FACTUAL FINDINGS

License History and Jurisdictional Background

1. On August 23, 1994, the board issued Pharmacist License Number RPH 47420 to respondent Azita Arbab.

2. On December 2, 2022, the board issued a section 820 order requiring respondent to submit to a mental and/or physical examination to determine whether she is impaired due to mental and/or physical illness affecting her fitness to practice. The order required respondent to obtain a mental health examination by a board-appointed examiner no later than 30 days from the date of service of the order. The section 820 order was served on respondent on December 2, 2022, by regular and certified mail. The section 820 order listed as cause for possible mental illness impairing safe practice respondent's two criminal convictions, one from December 9, 2020, (trespass and occupying property in violation of Penal Code section 602,

subdivision (l)), and the other from July 9, 2021, (obstruction and resisting arrest in violation of Penal Code section 148, subdivision (a)(1)), and the underlying circumstances of each of those convictions.

3. Respondent failed to contact the board's appointed examiner to make arrangements for the mental health examination by the required deadline of January 3, 2023. Respondent contacted the board's appointed examiner on February 14, 2023. The board agreed to extend the deadline for respondent's compliance with the December 2, 2022, section 820 order. Respondent's evaluation by the board's appointed examiner was scheduled for March 14, 2023, but respondent failed to appear for the examination.

4. On March 24, 2023, the board filed accusation number 7240 against respondent seeking the revocation of respondent's license based on her failure to comply with the December 2, 2022, section 820 order.

5. On May 8, 2023, respondent signed a Stipulated Settlement and Order for Suspension of License, which was adopted by the board and became effective on May 19, 2023. In the Stipulated Settlement and Order for Suspension of License, respondent admitted that each and every charge alleged in accusation number 7240 was true. The Stipulated Settlement and Order for Suspension of License immediately suspended respondent's license and ordered respondent to undergo a mental health evaluation within 30 days pursuant to the terms as set forth in the December 2, 2022, section 820 order.

6. On July 20, 2023, the board filed the accusation in this matter seeking revocation of respondent's license on the sole basis that she failed to comply with the board's section 820 order issued on December 2, 2022, and failed to comply with the

terms of the Stipulated Settlement and Order for Suspension of License effective May 19, 2023, requiring her to submit to a mental health evaluation pursuant to Business and Professions Code section 820. The accusation also sought the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3.¹

7. Respondent timely filed a notice of defense, and this hearing followed.

Declaration of Marjorie Cohn, Ph.D.

8. The Declaration of Marjorie Cohn, Ph.D., dated August 22, 2023, was received into evidence pursuant to Government Code section 11514. Dr. Cohn is a licensed psychologist in California and has held her license since January 6, 2006. Dr. Cohn has a Doctorate degree in psychology from Pacifica Graduate Institute, a Master of Arts degree in clinical psychology from Antioch University, a Master of Arts degree in holistic health education from John F. Kennedy University, and a Bachelor of Arts degree from New York University. On May 3, 2023, Dr. Cohn was appointed by the board to conduct a mental health evaluation of respondent for a determination of fitness to practice. The following factual findings are made from Dr. Cohn's declaration.

¹ Business and Professions Code section 125.3 provides that reasonable costs of investigation and enforcement may be sought in any disciplinary proceeding based upon any violation of the licensing act before any board. However, the board failed to provide any evidence regarding costs associated in this matter. Accordingly, no findings regarding costs of investigation or enforcement in this matter are made.

9. On May 3, 2023, respondent scheduled her board-ordered evaluation to commence on May 23, 2023, at 10:00 a.m.

10. On May 23, 2023, at approximately 10:15 a.m. Dr. Cohn attempted to contact respondent by telephone at the telephone number provided by the board because she failed to appear for her evaluation. Respondent did not answer the telephone and Dr. Cohn left her a voicemail message requesting that she contact Dr. Cohn.

11. Dr. Cohn waited for one hour for respondent to appear for her evaluation on May 23, 2023, and when respondent failed to appear, Dr. Cohn sent an email to the board inquiring if the board would allow respondent to reschedule the evaluation. Dr. Cohn received an email from the board indicating that respondent could reschedule the evaluation so long as the exam occurred on or before June 15, 2023. Dr. Cohn then sent an email to respondent at her email address provided by the board inquiring if respondent wanted to reschedule the evaluation. As of the date of Dr. Cohn's declaration on August 22, 2023, respondent had not replied to Dr. Cohn's email.

Respondent's Testimony

12. Respondent Azita Arbab, also previously known as Azita Arbab-Kalantari, has been licensed as a pharmacist since 1994. Respondent testified that she has not practiced as a pharmacist for about 12 years. She worked for many years as a pharmacist at Rite Aid.

13. Respondent testified that she refused to comply with the board's section 820 order because she "believes there is no place to ask [her] to undergo a mental health examination" and because while she agreed to undergo the mental health examination pursuant to the stipulation she signed, she simply "missed my

appointment.” Respondent also stated that she does not want to undergo a mental health examination “because this is my private life,” and because she “doesn’t use her license.”

14. Respondent also argued that in 2019 she “already underwent a mental health evaluation” for the “courthouse in downtown L.A.” Respondent provided half of a single page document received in evidence, which appears to be a portion of a court docket from an unknown court. The document provides as follows under the date of “07/02/19” at “Mental Health Courthouse Department 95 Minute Order Filed:”

Per Minute Order dated 7/1/19, Defendant found mentally competent. Defendant returned to Department W73 Airport Court Set on 7/2/19 at 8:30 am as Day 0/30.

Next Scheduled Event:

07/02/19 830 AM Mental Competency Referral Hear Dist
Airport Courthouse Dept W73.

The half-page document provided gave no further information.

15. On cross-examination, respondent was unable to answer questions regarding the name of the physician who examined her in 2019 or the purpose of the examination. Notably, the document purports to show that some sort of mental competency examination happened in 2019. However, there is no indication of what was actually being evaluated from respondent, but it is highly unlikely that the mental evaluation from the unknown court was related to her ability to safely practice pharmacy. Furthermore, the evaluation happened over two years prior to the

December 2, 2022, section 820 order from the board. Accordingly, the document was not relevant to the issues in this matter.

The Parties' Arguments

16. Complainant argues that respondent's failure to submit to a mental health evaluation pursuant to section 820 as required by both the December 2, 2022, section 820 order and the May 19, 2023, Stipulated Settlement and Order for Suspension of License is basis for revocation of respondent's license pursuant to Business and Professions Code section 821. The only appropriate action in this case is revocation of respondent's license.

17. Respondent argues that the board failed to establish that it "met its burden" to establish that respondent is unable to practice safely due to mental illness so that the board could issue an order pursuant to Business and Professions Code section 820 as an initial matter. Respondent argued it would be "unfair" for respondent to have to comply with a mental health examination pursuant to section 820 if the board has not met its burden to show respondent appears to be unable to practice safely such that the board could issue the initial section 820 order.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code, § 115; 500.) The standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing

evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Statutes

2. Business and Professions Code section 820 provides:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

3. Business and Professions Code section 821 provides:

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

4. Business and Professions Code section 822 provides:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Evaluation

5. Cause exists under Business and Professions Code section 821 to suspend or revoke respondent's license. Complainant established by clear and convincing evidence that respondent failed to comply with both the December 2, 2022, section 820 order to undergo a mental health evaluation, as well as the May 19, 2023, Stipulated Settlement and Order for Suspension of License ordering her to

undergo a mental health evaluation within 30 days pursuant to the terms of the December 2, 2022, section 820 order.

6. Respondent admitted during her testimony that she simply refused to undergo the mental health examination because she “believes there is no place to ask [her] to undergo a mental health examination” and because while she agreed to undergo the mental health examination pursuant to the stipulation she signed, she simply “missed my appointment.” Respondent also stated that she does not want to undergo a mental health examination “because this is my private life,” and because she “doesn’t use her license.”

7. Respondent’s argument that the board does not have authority under Business and Professions Code section 820 to order her to undergo a mental health examination is without merit. As set forth in *Fettgatter v. Board of Psychology*, 17 Cal.App.5th 1340, 1348 (2017), “evidence submitted on the merits of whether a mental fitness exam was warranted [is] irrelevant to a section 821 proceeding” and would only be relevant “if the appellant had actually submitted to the order.” As noted in *Fettgatter*, “the government’s interest would be severely impacted if licensees were permitted to delay investigations the licensee believed were unwarranted because it would unnecessarily delay the investigation and ultimate determination of mental fitness.” (*Fettgatter, supra*, at p. 1348, citations omitted). Respondent simply failed to comply with the board’s section 820 order and, as a result, is not entitled to challenge the merits of the order at this hearing to revoke her license pursuant to section 821. Furthermore, as set forth in the December 2, 2022, section 820 order, the basis for the section 820 order was respondent’s two convictions and her underlying conduct resulting in those convictions, which establishes good cause for the board to investigate respondent’s mental fitness.

8. After consideration of all evidence, the only action that will afford public protection in this matter is the revocation of respondent's license.

ORDER

Pharmacist License Number RPH 47420 issued to respondent Azita Arbab, a.k.a. Azita Arbab-Kalantari, is revoked.

DATE: March 28, 2024

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 7581

14 **AZITA ARBAB,**
15 **AKA AZITA ARBAB-KALANTARI**
P. O. Box 10297
16 **Newport Beach, CA 92658**

ACCUSATION

17 **Pharmacist License No. RPH 47420**

18 Respondent.

19 **PARTIES**

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

22 2. On or about August 23, 1994, the Board issued Pharmacist License Number RPH
23 47420 to Azita Arbab, aka Azita Arbab-Kalantari (Respondent). The Pharmacist License was in
24 full force and effect at all times relevant to the charges brought in this Petition and will expire on
25 April 30, 2024, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300.1 of the Code states:

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

11 **STATUTORY PROVISIONS**

12 5. Section 820 of the Code states:

13 Whenever it appears that any person holding a license, certificate or permit
14 under this division or under any initiative act referred to in this division may be
15 unable to practice his or her profession safely because the licentiate's ability to
16 practice is impaired due to mental illness, or physical illness affecting competency,
17 the licensing agency may order the licentiate to be examined by one or more
18 physicians and surgeons or psychologists designated by the agency. The report of the
19 examiners shall be made available to the licentiate and may be received as direct
20 evidence in proceedings conducted pursuant to Section 822.

21 6. Section 821 of the Code provides that the licentiate's failure to comply with an order
22 issued under section 820 shall constitute grounds for the suspension or revocation of the
23 licentiate's certificate or license.

24 **COST RECOVERY**

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

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1 **FACTUAL ALLEGATIONS**

2 8. On or about December 2, 2022, the Board issued an order (the Order) requiring
3 Respondent to submit to a mental and/or physical examination to determine whether she is
4 impaired due to mental and/or physical illness affecting her fitness to practice.

5 9. On or about December 2, 2022, Respondent was served by Certified and First Class
6 Mail copies of the Order at her address of record, which pursuant to California Code of
7 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.

8 10. Paragraph 2 of the Order provides, "That the examination(s) of Respondent shall be
9 conducted at a time that is mutually convenient to Respondent and the examiner selected by the
10 Board, but in no case later than thirty (30) days after the service of this Order."

11 11. Respondent failed to contact the Board's appointed examiner to make arrangements
12 for the examination within thirty days of service of the Order, which was January 3, 2023.

13 12. Respondent contacted the examiner by telephone on February 14, 2023. The Board
14 agreed to extend the deadline for her compliance with the Order. The evaluation was scheduled
15 for March 14, 2023. Respondent failed to appear at the examination. When contacted by the
16 examiner's office, Respondent denied scheduling the appointment.

17 13. On May 19, 2023, the Board adopted a stipulation signed by Respondent wherein she
18 agreed to a suspension of her license effective immediately. The stipulation required Respondent
19 to undergo a mental and/or physical evaluation as set forth in the Order within thirty days.
20 Respondent failed to undergo an evaluation within the required thirty days.

21 **CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Board Order)**

23 14. Respondent is subject to disciplinary action under Code section 821 in that she failed
24 to comply with the Board's Order, issued on December 2, 2022, requiring her to submit to a
25 mental and/or physical examination pursuant to Code section 820. The circumstances are
26 described in paragraphs 8 through 13 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 47420, issued to Azita Arbab, aka Azita Arbab-Kalantari;

2. Ordering Azita Arbab 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: 7/20/2023

Sodergren,
Anne@DCA
ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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