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7

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. 3444

13 **ANDRE GABRIEL SERHAL**
1109 Briarcliff Road
14 Monrovia, CA 91016
Pharmacy Technician Registration No. TCH 73079

A C C U S A T I O N

15 Respondent.

16
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 (Board).
22 2. On or about September 17, 2007, the Board issued Pharmacy Technician Registration
23 No. TCH 73079 to Andre Gabriel Serhal (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 May 31, 2011, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 STATUTORY PROVISIONS

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

6 5. Section 490 provides that a board may suspend or revoke a license on the ground that
7 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
8 duties of the business or profession for which the license was issued.

9 6. Section 4060 provides that no person shall possess any controlled substance, except
10 that furnished to a person upon the prescription of a physician or other licensed authorized
11 professional.

12 7. Section 4300 states that "[e]very license issued may be suspended or revoked."

13 8. Section 4301 states, in pertinent part:

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

17

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

21

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

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

3 "(k) The conviction of more than one misdemeanor or any felony involving the use,
4 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
5 combination of those substances.

6 "(l) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. . . .

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

REGULATORY PROVISIONS

12
13 9. California Code of Regulations, title 16, section 1770, states:

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

COST RECOVERY

20
21 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
22 law judge to direct a licentiate found to have committed a violation or violations of the licensing
23 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
24 case.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

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26 11. Cocaine is a Schedule I controlled substance as designated in Health and Safety Code
27 section 11054(f)(1), and a dangerous drug according to section 4022.

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1 12. Lortab is a combination of hydrocodone and acetaminophen and therefore is a
2 Schedule III controlled substance per Health and Safety Code section 11056(e)(4).

3 13. Marijuana is a Schedule I controlled substance as defined in Health and Safety Code
4 section 11054(d)(13) and a dangerous drug according to section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of Substantially Related Crime)**

7 14. Respondent is subject to disciplinary action under sections 490, 4300, 4301,
8 subdivision (l), on the grounds of unprofessional conduct in conjunction with California Code of
9 Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially
10 related to the qualifications, functions or duties of a registered pharmacy technician which to a
11 substantial degree evidence his present or potential unfitness to perform the functions authorized
12 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

13 a. On or about April 9, 2009, after pleading nolo contendere, Respondent was convicted
14 of one (1) felony count of violating Health and Safety Code section 11359 [possession of
15 marijuana for sale] in the criminal proceeding entitled *The People of the State of California v.*
16 *Andre Gabriel Serhal* (Super. Ct. Los Angeles County, 2008, No. GA075479). The Court
17 sentenced Respondent in lieu of 90 days in jail to perform 30 days of Cal Trans or graffiti
18 removal duty, placed him on three (3) years probation, ordered him to register as a convicted
19 narcotics offender and carry proof of registration at all times, and ordered him to complete Penal
20 Code section 296 requirements.

21 b. The circumstances underlying the conviction are that on or about December 16, 2008,
22 a search warrant was executed against Respondent who was under narcotic investigation by the
23 Monrovia Police Department (MPD). Respondent was arrested after driving his vehicle away
24 from his residence. Respondent was in possession of a digital scale "CE" and 4.98 grams of
25 marijuana buds in his vehicle. Found in Respondent's bedroom were 96.79 grams of marijuana
26 buds, a "Palmscale" digital scale, an unmarked pill bottle with 51 hydrocodone tablets, a plastic
27 sandwich bags box, various writings recording "Pay and Owe's" and \$2,370 in cash. Respondent
28 admitted to smoking a lot of weed, the marijuana was all his, giving some marijuana to his friends

1 and, the previous evening, purchasing \$500 worth of marijuana. Scrapings from one of the digital
2 scales tested positive for cocaine.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Felony Drug Conviction)**

5 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (k), on the grounds of unprofessional conduct, in that on or about April 9, 2009,
7 Respondent was convicted of a felony involving marijuana, a dangerous drug. Complainant
8 refers to and by this reference incorporates the allegations set forth above in paragraph 15,
9 subdivision a and b, inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Illegal Possession of Controlled Substances)**

12 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
13 subdivision (j), on the grounds of unprofessional conduct in conjunction with section 4060, in that
14 on or about December 16, 2008, Respondent was in possession of controlled substances without
15 valid prescriptions. Complainant refers to and by this reference incorporates the allegations set
16 forth above in paragraphs 15 - 16, inclusive, as though set forth fully.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

19 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
20 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
21 involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to
22 and by this reference incorporates the allegations set forth above in paragraphs 15 - 17, inclusive,
23 as though set forth fully.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violating Provisions of the Pharmacy Law)**

26 18. Respondent is subject to disciplinary action under sections 4300 and 4301,
27 subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated provisions
28 of the Pharmacy Law. Complainant refers to and by this reference incorporates the allegations set

1 forth above in paragraphs 15 - 18, inclusive, as though set forth fully.

2 **DISCIPLINE CONSIDERATIONS**

3 19. To determine the degree of discipline, Complainant alleges that on or about
4 June 23, 2004, in a prior criminal proceeding entitled *The People of the State of California v.*
5 *Andre Gabriel Serhal* (Super. Ct. Los Angeles County, No. 4AL02884) Respondent was
6 convicted of violating Penal Code section 242 (battery), a misdemeanor. The Court placed
7 Respondent on three (3) years probation, ordered him to perform ten (10) days of Cal Trans duty,
8 and ordered him to perform ten (10) days graffiti removal.

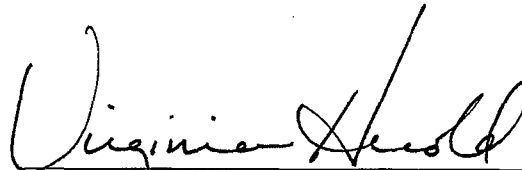
9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 73079, issued
13 to Respondent;
- 14 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
15 enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

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18
19 DATED: _____

7/6/10



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

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