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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	STATE OF CALIFORNIA
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.12	In the Matter of the Accusation Against: Case No. 3586
13	HOLLY LYNN ALLEN 7264 Olympic Rd. #102
14	Joshua Tree, CA 92252 A C C U S A T I O N
15	Pharmacy Technician License No. TCH 15233
16	Respondent.
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18	Complainant alleges:
19	PARTIES
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
22	2. On or about February 22, 1995, the Board issued Pharmacy Technician License No.
22	TCH 15233 to Holly Lynn Allen (Respondent). The Pharmacy Technician License was in full
24	force and effect at all times relevant to the charges brought herein and will expire on
25	April 30, 2012, 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.
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## STATUTORY PROVISIONS

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

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5. Section 4060 states:

"No person shall possess any controlled substance, except that furnished to a person upon 7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified 9 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a 10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, 11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of 12 13 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, 14 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified 15 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly 16 labeled with the name and address of the supplier or producer. 17

"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."

6. Section 4300 subdivision (a), states that "[e]very license issued may be suspended or
revoked."

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7. 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 procured by fraud or misrepresentation or issued by mistake.
Unprofessional conduct shall include, but is not limited to, any of the following:

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"(h) The administering to oneself, of any controlled substance, or the use of any dangerous 1 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to 2 3 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 4 practice authorized by the license. 5 6 The violation of any of the statutes of this state, or any other state, or of the United "(i) 7 States regulating controlled substances and dangerous drugs. 8 9 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the 10 violation of or conspiring to violate any provision or term of this chapter or of the applicable 11 federal and state laws and regulations governing pharmacy, including regulations established by 12 the board or by any other state or federal regulatory agency. . . ." 13 14 **COST RECOVERY** Section 125.3 provides that the Board may request the administrative law judge to 8. 15 direct a licentiate found to have committed a violation or violations of the licensing act to pay a 16 sum not to exceed the reasonable costs of the investigation and enforcement of the case. 17 **REGULATORY PROVISIONS** 18 9. California Code of Regulations, title 16, section 1770, states: 19 "For the purpose of denial, suspension, or revocation of a personal or facility license 20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a 21 crime or act shall be considered substantially related to the qualifications, functions or duties of a 22 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 23 licensee or registrant to perform the functions authorized by his license or registration in a manner 24 consistent with the public health, safety, or welfare." 25 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS** 26 10. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health 27 and Safety Code section 11054(d)(13) and a dangerous drug according to section 4022. 28 3

Accusation

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1	11. Phentermine, a stimulant, is classified as a Schedule IV controlled substance pursuant
2	to the Health and Safety Code section 11057, subdivision (f)(4), and is a dangerous drug within
2	the meaning of section 4022.
4	FIRST CAUSE FOR DISCIPLINE
5	(Dangerous Use of Controlled Substances)
6	12. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
7	the grounds of unprofessional conduct, in that on or about March 24, 2008, Respondent
8	administered to herself Marijuana and Phentermine, controlled substances and dangerous drugs,
9 ·	without a valid prescription in a manner as to be dangerous or injurious to herself or others, and /
10	or the extent of her use impairs her ability to conduct with safety to the public.
11	13. The circumstances were that on or about March 24, 2008, while employed as a
12	licensed pharmacy technician at Wal-Mart Pharmacy, Yucca Valley, California, Respondent
13	submitted to a drug screen administered by her employer. The drug test was administered after
14	the pharmacy experienced an unexplained shortage of controlled substances. The results of the
15	drug screen showed positive results for Marijuana and Phentermine, controlled substances and
16	dangerous drug, for Respondent.
17	SECOND CAUSE FOR DISCIPLINE
18	(Possession of Controlled Substances)
19	14. Respondent is subject to disciplinary action under section 4301, subdivision (j), for
20	violating section 4060, on the grounds of unprofessional conduct, in that on or about
21	March 24, 2008, Respondent possessed Marijuana and Phentermine, controlled substances and
22	dangerous drugs, without valid prescriptions. Complainant refers to the allegations set forth
23	above in paragraph 13, inclusive, and incorporates them by reference as though set forth fully.
24	THIRD CAUSE FOR DISCIPLINE
25	(Violate Chapter - Unprofessional Conduct)
26	15. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
27	that on or about March 24, 2008, Respondent committed acts of unprofessional conduct violating
28	provisions of the chapter. Complainant refers to and by this reference incorporates the allegations
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. 1	set forth above in paragraph 13, inclusive, as though set forth fully.
2	PRAYER
3	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
. 4	and that following the hearing, the Board issue a decision:
5	1. Revoking or suspending Pharmacy Technician License No. TCH 15233, issued to
6	Respondent;
7	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
8	enforcement of this case, pursuant to section 125.3; and
9	3. Taking such other and further action as deemed necessary and proper.
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12	DATED: 01310 herricherde
13	VIRGINIA PIEROLD Executive Officer
14	Board of Pharmacy Department of Consumer Affairs
15	State of California Complainant
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