1	Kamala D. Harris	
2	Attorney General of California MARC D. GREENBAUM	
3	Supervising Deputy Attorney General KIMBERLEY J. BAKER-GUILLEMET	
4	Deputy Attorney General State Bar No. 242920	
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013	
6	Telephone: (213) 897-2533 Facsimile: (213) 897-2804	
7	Attorneys for Complainant	
8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against: Case No. 3601	ĺ
12	SERJ SOUKAZ MARKARIAN 7766 N. Glenoaks Blvd. Resolved to CA 21504	
13	Burbank, CA 91504 Pharmacist License No. RPH 54284 A C C U S A T I O N	
14	Respondent.	
15		
16	Complainant alleges:	
17	<u>PARTIES</u>	
18	1. Virginia K. Herold (Complainant) brings this Accusation solely in her official	l
19 20	capacity as the Executive Officer of the California State Board of Pharmacy.	
21	2. On or about March 20, 2003, the Board of Pharmacy issued Pharmacist License	
22	Number RPH 54284 to Serj Soukaz Markarian (Respondent). The Pharmacist License was in full	١
23	force and effect at all times relevant to the charges brought herein and will expire on September	
24	30, 2012, unless renewed.	
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JURISDICTION

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

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 5. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
 - 6. Section 4022 of the Code states:

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

- "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
- "(b) Any device that bears the statement: "Caution: federal law restricts this 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 order use of the device.
- "(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.
 - 7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant 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 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."

8. Section 4301 of the Code states:

"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:

. . . .

"(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.

. . .

"(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.

REGULATORY PROVISIONS

9. 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."

COST RECOVERY

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

DRUGS

- 11. Pregabalin, also known by the brand name Lyrica, is a Schedule V, non-narcotic controlled substance under Health and Safety Code section 11058, and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.
- 12. Eszopiclone, also known by the brand name Lunesta, is a Schedule IV, non-narcotic controlled substance under Health and Safety Code section 11057, and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

- 13. Tadalafil, also known by the brand name Cialis, is not a scheduled drug, but is classified as a dangerous drug pursuant to Business and Professions Code section 4022.
- 14. Celecoxib, also known by the brand name Celebrex, is not a scheduled drug, but is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Convictions)

- 15. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (1), of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed pharmacist. Specifically, on or about September 2, 2008, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code Section 602.5(B) [entering dwelling without consent] in the criminal proceeding entitled *The People of the State of California v. Serj Soukaz Markarian* (Super. Ct. Los Angeles County, 2008, No. 7PY07737). Respondent was placed on probation for 36 months and was ordered to pay a fine.
- 16. The circumstances are that on or about August 17, 2007, while working as a pharmacist at CVS Pharmacy, Respondent was observed concealing the following pharmaceuticals in his bag: Cialis 20 mg, Lyrica 50 mg, Lunesta 3mg and Celebrex 100 mg. A CVS store manager waited for Respondent to exit the store at closing time and contacted him in the parking lot. The store manager checked Respondent's bags and located five (5) bottles of pharmaceuticals that had been taken from the pharmacy without permission and had not been paid for nor prescribed to Respondent.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonest Act)

17. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that he committed an act involving moral turpitude, dishonesty, fraud, deceit or corruption. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 15 and 16, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance Without a Prescription)

18. Respondent is subject to disciplinary action under section 4060 of the Code, in that he possessed controlled substances that were not furnished to him upon prescription of a physician. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 15 and 16, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Administer/Furnish Controlled Substance to Self)

19. Respondent is subject to disciplinary action under section 11170 of the Health and Safety Code in that he prescribed, administered or furnished a controlled substance to himself. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 15 and 16, as though set forth fully.

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 54284, issued to Serj Soukaz Markarian;
- 2. Ordering Serj Soukaz Markarian 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;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 6/6/11

VIRGINIA K. HEROLD

Executive Officer

California State Board of Pharmacy

State of California

Complainant

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