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

11 In the Matter of the Accusation Against:  
12  
13 **MARCUS LEON EDDENS**  
**509 Granite View Drive**  
**Perris, CA 92571**  
14  
15 **Pharmacy Technician Registration**  
**No. TCH 96615**  
16 Respondent.

Case No. 4133

**ACCUSATION**

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.
- 22 2. On or about January 29, 2010, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 96615 to Marcus Leon Eddens (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on April 30, 2013, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or  
6 revoked.”

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to evaluate  
14 the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
20 revoke a license on the ground that the licensee has been convicted of a crime substantially  
21 related to the qualifications, functions, or duties of the business or profession for which the  
22 license was issued.

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8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. 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:

....

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

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1 (l) The conviction of a crime substantially related to the qualifications, functions,  
2 and duties of a licensee under this chapter. The record of conviction of a violation of  
3 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
4 regulating controlled substances or of a violation of the statutes of this state  
5 regulating controlled substances or dangerous drugs shall be conclusive evidence of  
6 unprofessional conduct. In all other cases, the record of conviction shall be  
7 conclusive evidence only of the fact that the conviction occurred. The board may  
8 inquire into the circumstances surrounding the commission of the crime, in order to  
9 fix the degree of discipline or, in the case of a conviction not involving controlled  
10 substances or dangerous drugs, to determine if the conviction is of an offense  
11 substantially related to the qualifications, functions, and duties of a licensee under this  
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere is deemed to be a conviction within the meaning of this provision. The  
14 board may take action when the time for appeal has elapsed, or the judgment of  
15 conviction has been affirmed on appeal or when an order granting probation is made  
16 suspending the imposition of sentence, irrespective of a subsequent order under  
17 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of  
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
19 dismissing the accusation, information or indictment.

20 ....

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

25 (p) Actions or conduct that would have warranted denial of a license.

26 ....

27 11. Section 4022 of the Code states

28 "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.

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12. 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, or veterinarian, 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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, 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, or a physician assistant to order his or her own stock of dangerous drugs and devices.

13. Title 16, California Code of Regulations, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

14. Title 16, California Code of Regulations, 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.

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1 COST RECOVERY

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

6 DRUG

7 16. Cocaine is a Schedule II controlled substance as designated by Health and Safety  
8 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code  
9 section 4022.

10 FIRST CAUSE FOR DISCIPLINE

11 **(September 27, 1994 Criminal Conviction for Taking Vehicle Without Owner's Permission**  
12 **on September 13, 1994)**

13 17. Respondent is subject to disciplinary action under sections 490 and 4301,  
14 subdivisions (l) of the Code in that Respondent was convicted of a crime substantially related to  
15 the qualifications, functions and duties of a pharmacy technician. The circumstances are as  
16 follows:

17 a. On or about September 27, 1994, in a criminal proceeding entitled *People of the*  
18 *State of California vs. Marcus Leon Eddens*, in the Los Angeles Superior Court, Bellflower  
19 Courthouse Judicial District, in case number 94M04466, Respondent pled guilty to violating  
20 Penal Code section 499(b) (taking vehicle without owner's permission), a misdemeanor.

21 b. The circumstances that led to the conviction are that on or about September 13, 1994,  
22 Los Angeles Sheriff's Department deputies arrested Respondent for taking a vehicle without the  
23 owner's permission.

24 c. As a result of the conviction, Respondent was placed on three years summary  
25 probation and ordered to perform 30 hours of community service and obey all laws and orders of  
26 the court. On or about February 28, 1995, a \$5,000 bench warrant was issued for Respondent's  
27 arrest for violating probation. On June 7, 1995, a hearing was held and the bench warrant was  
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1 recalled. Respondent was ordered to serve 90 days in the county jail, with 6 days credit for time  
2 served. Probation was ordered terminated upon completion of the jail sentence.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Illegal Possession of a Controlled Substance – Cocaine – on**  
5 **March 2, 2011)**

6 18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
7 (o) of the Code in that Respondent was in possession of the controlled substance and dangerous  
8 drug, cocaine, without a prescription in violation of section 4060 of the Code. The circumstances  
9 are as follows:

10 a. On March 2, 2011, at approximately 1755 hours, Los Angeles Police Officers, while  
11 working in an undercover capacity driving an undercover vehicle, observed Respondent and a  
12 female walking northbound on Crocker approaching 4th Street in the City of Los Angeles. The  
13 officers observed Respondent had his right hand out in front of him, palm facing up. Respondent  
14 and the female were both looking down at Respondent's open right palm. When the officers were  
15 approximately 15 feet from Respondent, they observed an off-white solid resembling cocaine  
16 base on the suspect's open right palm. The officers exited the undercover vehicle and, as the  
17 officers approached Respondent, Respondent immediately closed his right hand, forming a fist.  
18 The officers identified themselves and told Respondent to open his right hand. Officers then  
19 recovered the off-white solid resembling cocaine base wrapped in plastic. Respondent was  
20 arrested for possession of cocaine base. During a search of Respondent's person, the officers  
21 recovered a "Kool" cigarette box. Inside the cigarette box, officers recovered two (2) off-white  
22 solids resembling cocaine base wrapped in plastic and a glass pipe with residue. Respondent was  
23 transported to the Los Angeles County Jail and booked.

24 b. As a result of the arrest, on or about March 24, 2011, in a criminal proceeding entitled  
25 *People of the State of California vs. Marcus Leon Eddens*, in the Los Angeles Superior Court,  
26 case number BA381658, Respondent pled guilty to violating Health and Safety Code section  
27 11350 (possession of a controlled substance), to wit: cocaine.  
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1 c. As a result of the guilty plea, the court deferred entry of judgment for 18 months and  
2 Respondent was placed on drug diversion pursuant to Penal Code section 1000, and ordered  
3 Respondent to pay various fees and fines, obey all laws and orders of the Court, enroll within 30  
4 days and successfully complete an approved controlled substance treatment program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Committed Act Which Would Have Warranted**  
7 **Denial of License)**

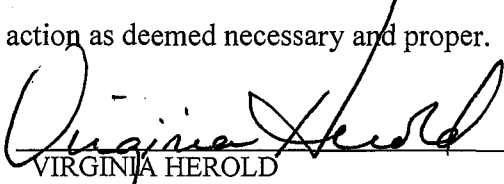
8 19. Respondent is subject to disciplinary action under section 4301(p) of the Code in that  
9 he engaged in actions or conduct that would have warranted denial of a license, as fully set forth  
10 at paragraph 17 and 18, above, which are incorporated here by reference.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 96615,  
15 issued to Marcus Leon Eddens;
- 16 2. Ordering Marcus Leon Eddens, to pay the Board of Pharmacy the reasonable costs of  
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 4/3/12

  
21 VIRGINIA HEROLD  
22 Executive Officer  
23 Board of Pharmacy  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

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