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

In the Matter of the Accusation and Petition to Revoke Probation Against, **SERJ SOUKAZ MARKARIAN, AKA SEROJ SOUKIAZIAN** **7766 N. Glenoaks Blvd.** **Burbank, CA 91504** **Pharmacist License No. RPH 54284** Respondent.	Case No. 4645 ACCUSATION AND PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about March 20, 2003, the Board of Pharmacy issued Pharmacist License Number RPH 54284 to Serj Soukaz Markarian, aka Seroj Soukiazian (Respondent). The Pharmacist License was in effect at all times relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

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3. In a disciplinary action entitled "In the Matter of Accusation Against Serj Soukaz Markarian," Case No. 3601, the Board of Pharmacy, issued a decision, effective June 17, 2012, in which Respondent's Pharmacist License was revoked. However, the revocation was stayed and Respondent's Pharmacist License was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit "A" and is incorporated by reference.

JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION

4. 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.

5. Section 118, subdivision (b), of the Code 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.

6. Section 4301 of the Code 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:

. . .

"(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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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COST RECOVERY

7. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty/False Representation)

8. Respondent is subject to disciplinary action under section 4301, subdivision (f) and (g), in that Respondent engaged in an act of dishonesty, fraud and/or deceit by making false representations to the Board and signing a document that falsely represented certain facts to the board. The circumstances are that on or about September 6, 2012, Respondent signed under penalty of perjury a license renewal application which falsely stated that he had successfully completed the hours of continuing education required for renewal. During the Board's audit of Respondent's continuing education hours, Respondent made additional false representations to the Board regarding his continuing education hours.

JURISDICTION FOR PETITION TO REVOKE PROBATION

9. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under Probation Term and Condition Number 15 of the Decision and Order In the Matter of Accusation Against Serj Soukaz Markarian, Case No. 3601. That term and condition states as follows:

"If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order

that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided."

FIRST CAUSE TO REVOKE PROBATION

(Interview with Board)

10. At all times after the effective date of Respondent's probation, Condition 4 stated:

"Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation."

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 4, referenced above. The facts and circumstances regarding this violation are that Respondent failed to appear for an office conference as scheduled on June 22, 2012, and did not contact the Board regarding his absence.

SECOND CAUSE TO REVOKE PROBATION

(Notification to Pharmacist-in-charge)

12. At all times after the effective date of Respondent's probation, Condition 7 stated, in pertinent part:

"During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3601 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

"Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed

individual(s) has/have read the decision in case number 3601, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

. . .

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

'Employment' within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer."

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are that Respondent failed to timely submit notification to the Board of the pharmacist-in-charge's acknowledgement that he or she had read the decision in case number 3601, and the terms and conditions imposed thereby. Such notification was not received by the Board until October 5, 2012.

THIRD CAUSE TO REVOKE PROBATION

(Mental Health Evaluation)

14. At all times after the effective date of Respondent's probation, Condition 17 stated, in pertinent part:

"Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the board or its designee, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the board's Accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function

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independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board or its designee."

15. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17, referenced above. The facts and circumstances regarding this violation are that Respondent failed to undergo a psychiatric evaluation within thirty (30) days of the effective date of probation and, to date, has not submitted evidence of completion of such an evaluation.

FOURTH CAUSE TO REVOKE PROBATION

(Pharmacists Recovery Program)

16. At all times after the effective date of Respondent's probation, Condition 18 stated, in pertinent part:

"Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the respondent.

. . .

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation. . . ."

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 18, referenced above. The facts and circumstances regarding this violation are as follows:

a. Respondent failed to timely enroll and participate in the Pharmacists Recovery Program (PRP), as he did not contact PRP until December 13, 2012, which was six (6) months after the effective date of probation. Additionally, on January 2, 2013, and January 7, 2013, Respondent failed to daily report to PRP, and on January 3, 2013, January 10, 2013, and March 9, 2013, Respondent failed to test as scheduled.

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FIFTH CAUSE TO REVOKE PROBATION

(Random Drug Screening)

18. At all times after the effective date of Respondent's probation, Condition 19 stated, in pertinent part:

"Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

. . . .

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 19, referenced above. The facts and circumstances regarding this violation are that on January 2, 2013, and January 7, 2013, Respondent failed to daily report to confirm whether a test was required, and on January 3, 2013, January 10, 2013, and March 9, 2013, Respondent failed to test as scheduled.

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SIXTH CAUSE TO REVOKE PROBATION

(Abstain from Drug and Alcohol Use)

20. At all times after the effective date of Respondent's probation, Condition 20 stated:

"Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation."

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 20, referenced above. The facts and circumstances regarding this violation are that Respondent tested positive for alcohol on March 11, 2013.

SEVENTH CAUSE TO REVOKE PROBATION

(Prescription Coordinator/Monitor)

22. At all times after the effective date of Respondent's probation, Condition 21 stated, in pertinent part:

"Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the facts and circumstances giving rise to Accusation 3601 and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation and decision. A record of this notification must be provided to the board upon request. . . ."

23. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 21, referenced above. The facts and circumstances regarding this violation are that, to date, Respondent has failed to establish and/or notify the Board that he has established a practitioner to coordinate and monitor his prescriptions.

EIGHTH CAUSE TO REVOKE PROBATION

(Community Service Program)

24. At all times after the effective date of Respondent's probation, Condition 22 stated:

"Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least sixty (60) hours per year for the first three (3) years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation."

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 22, referenced above. The facts and circumstances regarding this violation are that, to date, Respondent has not completed the procedures for submitting a community service program for approval by the Board nor has commenced working with a Board-approved community service program.

NINTH CAUSE TO REVOKE PROBATION

(Leaving State of California)

26. At all times after the effective date of Respondent's probation, Condition 24 stated:

"During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of the (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the

suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not resume the practice of pharmacy until notified by the board that the period of suspension has been satisfactorily completed."

27. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 24, referenced above. The facts and circumstances regarding this violation are that Respondent traveled outside the State of California in excess of ten (10) days during his period of suspension and did he timely not notify the Board in writing within ten (10) days of his departure or return.

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 the probation that was granted by the Board of Phamracy in Case No. 3601 and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License Number RPH 54284 issued to Serj Soukaz Markarian;

2. Revoking or suspending Pharmacist License Number RPH 54284 issued to Serj Soukaz Markarian;

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3. Ordering Serj Soukaz Markarian to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case with respect to the Accusation, pursuant to Business and Professions Code section 125.3

4. Taking such other and further action as deemed necessary and proper.

DATED: 9/19/13

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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3601

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

In the Matter of the Accusation Against: **SERJ SOUKAZ MARKARIAN** **7766 N. Glenoaks Blvd.** **Burbank, CA 91504** **Pharmacist License No. RPH 54284** Respondent.	Case No. 3601 OAH No. L-2011090609

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 7, 2012.

It is so ORDERED on May 8, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SERJ SOUKAZ MARKARIAN** **7766 N. Glenoaks Blvd.** **Burbank, CA 91504** **Pharmacist License No. RPH 54284** Respondent.	Case No. 3601 OAH No. L-2011090609 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney General.

2. Respondent Serj Soukaz Markarian (Respondent) is represented in this proceeding by attorney Herbert L. Weinberg, whose address is: 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

3. On or about March 20, 2003, the Board of Pharmacy issued Pharmacist License No. RPH 54284 to Serj Soukaz Markarian (Respondent). The Pharmacist License was in full force

and effect at all times relevant to the charges brought in Accusation No. 3601 and will expire on September 30, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3601 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 15, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 3601 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3601. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 3601.

10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 54284 issued to Respondent Serj Soukaz Markarian (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

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1. **Suspension**

As part of probation, respondent is suspended from the practice of pharmacy for sixty (60) days beginning the effective date of this decision.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment;

- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

3. **Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. **Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. **Cooperate with Board Staff**

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

6. **Continuing Education**

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

7. **Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3601 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3601, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 3601 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3601 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for

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which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

8. **No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant**

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of $5,657.50. Respondent shall make said payments in accordance with a payment plan to be determined by the Board

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

10. **Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

11. **Status of License**

Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon

renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. **License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. **Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

14. **Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.

Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least forty (40) hours, as defined by Business and Professions Code section 4000 et seq . "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least forty (40) hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

15. **Violation of Probation**

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If

a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. **Completion of Probation**

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

17. **Mental Health Examination**

Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the board or its designee, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the board's Accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board or its designee.

If the evaluator recommends, and the board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the board that a recommendation for psychotherapy has been accepted, respondent shall submit to the board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof by the board, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement.

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Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate board-appointed or board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's Accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacist, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

18. **Pharmacists Recovery Program (PRP)**

Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as

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recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

19. **Random Drug Screening**

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act

involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension. respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

20. **Abstain from Drugs and Alcohol Use**

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent.. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

21. **Prescription Coordination and Monitoring of Prescription Use**

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the facts and

circumstances giving rise to Accusation 3601 and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the

board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

22. **Community Services Program**

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least sixty (60) hours per year for the first three (3) years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

23. **No New Ownership of Licensed Premises**

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold

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that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

24. **Tolling of Suspension**

During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of the (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not resume the practice of pharmacy until notified by the board that the period of suspension has been satisfactorily completed.

25. **Ethics Course**

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/28/12

SERJ SOUKAZ MARKARIAN
Respondent

I have read and fully discussed with Respondent Serj Soukaz Markarian the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/29/12

Herbert L. Weinberg
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____ _____
SERJ SOUKAZ MARKARIAN
Respondent

I have read and fully discussed with Respondent Serj Soukaz Markarian the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____ _____
Herbert L. Weinberg
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 2/29/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **SERJ SOUKAZ MARKARIAN** **7766 N. Glenoaks Blvd.** **Burbank, CA 91504** **Pharmacist License No. RPH 54284** Respondent.	Case No. 3601 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California State Board of Pharmacy.

2. On or about March 20, 2003, the Board of Pharmacy issued Pharmacist License Number RPH 54284 to Serj Soukaz Markarian (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 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.

. . . .

"(l) 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 (l), 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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