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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 4782	
12	MARCUS A. DIGIOVANNA 43754 Sentry Lane		
13	Lancaster, ČA 93536	ACCUSATION	
14	Pharmacy Technician Registration No. TCH 48991		
15	Respondent.		
16			
17	Complainant alleges:		
18		TIES	
19 _.		ngs this Accusation solely in her official capacity	
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
21	2. On or about May 16, 2003, the Board of Pharmacy issued Pharmacy Technician		
22	Registration Number TCH 48991 to Marcus A. Digiovanna ("Respondent"). The Pharmacy		
23	Technician Registration was in full force and effect at all times relevant to the charges brought		
24	herein and will expire on March 31, 2015, unless renewed.		
25	JURISDICTION		
26	3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of		
27	Consumer Affairs, under the authority of the following laws. All section references are to the		
28	Business and Professions Code unless otherwise indicated.		
		1 Accusation	

4.

Section 4300.1 of the Code states:

2 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
3 operation of law or by order or decision of the board or a court of law, the placement of a license
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6 proceeding against, the licensee or to render a decision suspending or revoking the license."

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STATUTORY PROVISIONS

5. Section 492 of the Code states:

9 "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 10 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of 11 12 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 13 division, from taking disciplinary action against a licensee or from denying a license for 14 15 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a 16 record pertaining to an arrest.

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

20 6. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon 21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-23 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician 24 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a 25 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the 26 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, 27 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-28

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midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled 1 with the name and address of the supplier or producer. 2 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a 3 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and 4 devices." 5 7. Section 4300 the Code states, in pertinent part: 6 "(a) Every license issued may be suspended or revoked." 7 "(b) The board shall discipline the holder of any license issued by the board, whose default 8 9 has been entered or whose case has been heard by the board and found guilty, by any of the following methods: 10 "(1) Suspending judgment. 11 "(2) Placing him or her upon probation. 12 "(3) Suspending his or her right to practice for a period not exceeding one year. 13 "(4) Revoking his or her license. 14 15 "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper. 16 8. Section 4301 of the Code states, in pertinent part: 17 "The board shall take action against any holder of a license who is guilty of unprofessional 18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 19 Unprofessional conduct shall include, but is not limited to, any of the following: 20 21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 23 whether the act is a felony or misdemeanor or not. 24 25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous 26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to 27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or 28 3 Accusation to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer,
or furnish a controlled substance for himself."

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10. Health and Safety Code section 11350, subdivision (a) states:

"(a) Except as otherwise provided in this division, every person who possesses (1) any 9 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of 10 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or 11 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 12 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic 13 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian 14 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of 15 Section 1170 of the Penal Code." 16

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REGULATORY PROVISIONS

18 11. California Code of Regulations, title 16, section 1770, states:
19 "For the purpose of denial, suspension, or revocation of a personal or facility license
20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
21 crime or act shall be considered substantially related to the qualifications, functions or duties of a
22 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
23 licensee or registrant to perform the functions authorized by his license or registration in a manner
24 consistent with the public health, safety, or welfare."

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CONTROLLED SUBSTANCES

26 12. Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code
27 section 11054(f)(1) and a dangerous drug pursuant to Business and Professions Code section
28 4022.

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Accusation

13. Section 125.3 of the Code states, 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.

COST RECOVERY

FIRST CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

8 14. Respondent is subject to disciplinary action under Code sections 4060 and 4301,
9 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, on the
10 grounds of unprofessional conduct in that on or about December 15, 2011 and March 9, 2012,
11 Respondent violated the Pharmacy Law by unlawfully possessing a controlled substance, to wit,
12 cocaine. The circumstances are as follows:

13 15. On or about December 15, 2011, during an investigation into a reported battery, a 14 police officer entered Respondent's apartment. During a search of the living room, the officer 15 observed that on top of the coffee table there were four small straws and a residue of white 16 powder resembling cocaine. The officer further observed a clear Ziploc baggie and two large 17 chunks of white substance resembling cocaine. Respondent admitted to the officer that he had a 18 drug problem and that he had used some of the cocaine the night before. Respondent was 19 subsequently arrested.

16. On or about April 3, 2012, in the criminal proceeding entitled The People of the State 2021of California v. Marcus Digiovanna (Super. Ct. Los Angeles County, 2011, No. SA079532), in 22 connection with the arrest on December 15, 2011, Respondent pleaded guilty to one felony count of violating Health and Safety Code section 11350, subdivision (a). The Court deferred entry of 23 Respondent's guilty plea and placed Respondent on 18 months Deferred Entry of Judgment. On 24 or about July 13, 2012, the Court terminated Respondent's Deferred Entry of Judgment and 25 reinstated his guilty plea. The Court sentenced Respondent to 3 years probation with terms and 26 conditions pursuant to Proposition 36. 27

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1	17. On or about March 9, 2012, while patrolling the campus of the University of		
2	California, Los Angeles, a police officer observed Respondent sitting in the driver's seat of a		
3	vehicle. The officer approached Respondent and asked if he had anything illegal in the vehicle.		
4	Respondent handed the officer a small jar containing a white, powdery substance and admitted to		
5	the officer that it was cocaine. The officer searched Respondent's person and recovered a blue		
6	pipe with white residue resembling cocaine from his left front pant pocket. Respondent was		
7	subsequently arrested.		
8	18. On or about June 20, 2012, in the criminal proceeding entitled <i>The People of the State</i>		
9	of California v. Marcus Digiovanna (Super. Ct. Los Angeles County, 2011, No. SA0080753), in		
10	connection with the arrest on March 9, 2012, Respondent pleaded guilty to one felony count of		
11	violating Health and Safety Code section 11350, subdivision (a). The Court sentenced		
12	Respondent to 3 years probation with terms and conditions pursuant to Proposition 36.		
13	SECOND CAUSE FOR DISCIPLINE		
14	(Dangerous Use of Drugs)		
15	19. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)		
16	on the grounds of unprofessional conduct in that on or about December 14, 2011, Respondent		
17	used a controlled substance, to wit, cocaine, in a manner dangerous or injurious to himself or the		
18	public. Complainant incorporates by reference Paragraph 15 as though fully set forth herein.		
19	THIRD CAUSE FOR DISCIPLINE		
20	(Violating Drug Statutes)		
21	20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)		
22	and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of		
23	unprofessional conduct in that on or about December 14-15, 2011 and March 9, 2012, Respondent		
24	violated California rules regulating controlled substances when he unlawfully possessed and self-		
25	furnished cocaine without a prescription. Complainant incorporates by reference Paragraphs 15		
26	and 17 as though fully set forth herein.		
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FOURTH CAUSE FOR DISCIPLINE

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2	(Dishonest Act)		
3	21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)		
4	on the grounds of unprofessional conduct in that Respondent committed a dishonest act. The		
5	circumstances are as follows:		
6	22. On or about April 3, 2013, the Board received Respondent's Request for Renewal of		
7	California Pharmacy Technician Registration dated March 19, 2013. In response to the question		
8	"Since you last renewed your license, have you had any license disciplined by a government		
9	agency or any other disciplinary body; or have you been convicted of any crime in any state, the		
10	USA and its territories, military court or a foreign country?" Respondent answered "No."		
11	Respondent's answer was false because pursuant to Penal Code section 1210.1, subdivision (e)(3),		
12	he was required to disclose that on April 3, 2012 and June 20, 2012 he had pleaded guilty to		
13	violating Health and Safety Code section 11530, subdivision (a).		
14	PRAYER		
15	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
16	and that following the hearing, the Board of Pharmacy issue a decision:		
17	1. Revoking or suspending Phamacy Technician Registration Number TCH 48991,		
18	issued to Marcus A. Digiovanna;		
19	2. Ordering Marcus A. Digiovanna to pay the Board of Pharmacy the reasonable costs of	•	
20	the investigation and enforcement of this case, pursuant to Business and Professions Code section		
21	125.3; and	ŀ	
22	3. Taking such other and further action as deemed necessary and proper.		
23			
24	DATED: 11/13/13 Jusine Judo	_	
25	Executive Officer Board of Pharmacy		
26	Department of Consumer Affairs State of California		
27	Complainant		
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