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

11 In the Matter of the Accusation Against:

Case No. 4782

12 **MARCUS A. DIGIOVANNA**
13 **43754 Sentry Lane**
Lancaster, CA 93536

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **48991**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings 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 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
2 with the name and address of the supplier or producer.

3 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
4 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
5 devices."

6 7. Section 4300 the Code states, in pertinent part:

7 "(a) Every license issued may be suspended or revoked."

8 "(b) The board shall discipline the holder of any license issued by the board, whose default
9 has been entered or whose case has been heard by the board and found guilty, by any of the
10 following methods:

11 "(1) Suspending judgment.

12 "(2) Placing him or her upon probation.

13 "(3) Suspending his or her right to practice for a period not exceeding one year.

14 "(4) Revoking his or her license.

15 "(5) Taking any other action in relation to disciplining him or her as the board in its
16 discretion may deem proper.

17 8. Section 4301 of the Code states, in pertinent part:

18 "The board shall take action against any holder of a license who is guilty of unprofessional
19 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
20 Unprofessional conduct shall include, but is not limited to, any of the following:

21

22 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
23 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
24 whether the act is a felony or misdemeanor or not.

25

26 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3

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. . . ."

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

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

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

17 **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."

25 **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.

1 **COST RECOVERY**

2 13. 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 **FIRST CAUSE FOR DISCIPLINE**

7 **(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.

20 16. On or about April 3, 2012, in the criminal proceeding entitled *The People of the State*
21 *of 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
23 of violating Health and Safety Code section 11350, subdivision (a). The Court deferred entry of
24 Respondent's guilty plea and placed Respondent on 18 months Deferred Entry of Judgment. On
25 or about July 13, 2012, the Court terminated Respondent's Deferred Entry of Judgment and
26 reinstated his guilty plea. The Court sentenced Respondent to 3 years probation with terms and
27 conditions pursuant to Proposition 36.
28

1 **FOURTH CAUSE FOR DISCIPLINE**

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:

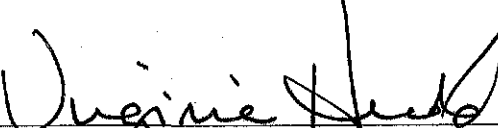
6 22. On or about April 3, 2013, the Board received Respondent's Request for Renewal of
7 California Pharmacy Technician Registration dated March 19, 2013. In response to the question
8 "Since you last renewed your license, have you had any license disciplined by a government
9 agency or any other disciplinary 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 Pharmacy 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
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 11/13/13


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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