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5	BEFOI	RE THE	
6	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
7	STATE OF CALIFORNIA		
8	In the Matter of the Accusation Against:	Case No. 3232	
9			
10	ANDRE BALIAN 165 N. Michigan St. 204	DEFAULT DECISION AND ORDER	
11	Pasadena, CA 91106		
12	Pharmacy Technician Registration TCH 35894	[Gov. Code, §11520]	
13	Respondent.		
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15	FINDING	S OF FACT	
16		plainant Virginia Herold, in her official capacity	
17	as the Executive Officer of the Board of Pharma		
18	Accusation No. 3232 against Andre Balian (Res		
19		Board of Pharmacy (Board) issued Pharmacy	
20	Technician License No. TCH 35894 to Respond	ent. The License was in full force and effect at	
21	all times relevant to the charges brought herein, and will expire on December 31, 2010, if not		
22	renewed.		
23	3. On or about January 7, 2010, S. Rey	es, an employee of the Department of Justice,	
24	served by Certified and First Class Mail a copy of	of the Accusation No. 3232, a Statement to	
25	Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with		
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DEFAULT DECISION AND ORDER (Case No. 3232)

the Board: 165 N. Michigan St., No. 204, Pasadena, CA 91106. Copies of the Accusation are
 attached as exhibit A, and are incorporated herein by reference.
 4. Service of the Accusation was effective as a matter of law under the provisions of
 Government Code section 11505, subdivision (c).

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Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

Respondent failed to file a Notice of Defense within 15 days after service upon his of
the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3232.

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7. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
agency may take action based upon the respondent's express admissions or upon other evidence
and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
evidence on file herein, finds that the allegations in Accusation No. 3232 are true.

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9. The total costs for investigation and enforcement in connection with the Accusation
20 are \$710.25 as of February 9, 2010.

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DETERMINATION OF ISSUES

Based on the foregoing findings of fact, Respondent Andre Balian has subjected his
 Pharmacy Technician License No. TCH 35894 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
License based upon the following violations alleged in the Accusation:

1	a. In violation of Business and Professions Code section 4301(f), Respondent	
2	committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption;	
3	b. In violation of Business and Professions Code sections 4301(j) Respondent possessed	
4	controlled substances;	
5	c. In violation of Business and Professions Code section 4301 (h), Respondent self-	
6	administered controlled substances.	
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8	ORDER	
9	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 35894, heretofore	
10	issued to Respondent Andre Balian, is revoked.	
11	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a	
12	written motion requesting that the Decision be vacated and stating the grounds relied on within	
13	seven (7) days after service of the Decision on Respondent. The agency in its discretion may	
14	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.	
15	This decision shall become effective on April 29, 2010.	
16	It is so ORDERED on March 30, 2010.	
17	Benneth H. Scheel	
18	KENNETH H. SCHELL, BOARD PRESIDENT	
19	FOR THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
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21	Attachment: Exhibit A: Accusation No. 3232	
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	3 DEFAULT DECISION AND ORDER (Case No. 3232)	

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DEFAULT DECISION AND ORDER (Case No. 3232)

1	EDMUND G. BROWN JR., Attorney General
2	of the State of California MARC D. GREENBAUM
3	Supervising Deputy Attorney General STEPHEN A. MILLS, State Bar No.
4	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013
5	Telephone: (213) 897-2539 Facsimile: (213) 897-2804
6	Attorneys for Complainant
7	
8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
. 11	In the Matter of the Accusation Against: Case No. 3232
12	ANDRE BALIAN165 N. Michigan Street, No. 204ACCUSATION
13	Pasadena, California 91106
14	Pharmacy Technician Registration Number TCH 35894
15	Respondent.
16	
17	Virginia Herold ("Complainant") alleges: <u> PARTIES</u>
18	1. Complainant brings this Accusation solely in her official capacity as the
. 20	Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	Pharmacy Technician Registration
22	2. On or about February 14, 2001, the Board of Pharmacy issued Pharmacy
23	Technician Registration Number TCH 35894 to Andre Balian ("Respondent"). The pharmacy
24	technician registration will expire on December 31, 2010.
25	STATUTORY PROVISIONS
26	3. Business and Professions Code ("Code") section 4202, subdivision (d),
27	states that the Board may suspend or revoke a registration issued pursuant to this section on any
28	ground specified in Section 4301.

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4. Code section 4300 states, in pertinent part:
(a) Every license issued may be suspended or revoked.
(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
(1) Suspending judgment.
(2) Placing him or her upon probation.
(3) Suspending his or her right to practice for a period not exceeding one
year.
(4) Revoking his or her license.
(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
5. Code section 4301 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.
(h) The administering to oneself, of any controlled substance, or the use of
any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or 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.
(j) The violation of any of the statutes of this state or of the United States
regulating controlled substances and dangerous drugs
6. Code section 4060 states, in pertinent part:
No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant
to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

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1	7. Health and Safety Code section 11350, subdivision (a), states:
2	Except as otherwise provided in this division, every person who possesses
3	any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of.
4	subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
5	substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
6	to practice in this state, shall be punished by imprisonment in the state prison.
7	COST RECOVERY
8	8. Code section 125.3 states, in pertinent part, that the Board may request the
9	administrative law judge to direct a licentiate found to have committed a violation or violations
10	of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11	enforcement of the case.
12	CONTROLLED SUBSTANCE
13	9. "Heroin" is a Schedule I controlled substance as designated by Health and
14	Safety Code section 11054, subdivision (c)(11).
15	"Cocaine" is a Schedule II controlled substance as designated by Health
16	and Safety Code section 11055, subdivision (b)(6).
17	FACTUAL BACKGROUND
18	10. On or about November 25, 2007, while in a Jamba Juice store, Respondent
19	locked himself in the restroom for approximately 20 minutes. Security was called and after a few
20	minutes, Respondent was coaxed out of the restroom. The security officers observed that
21	Respondent was sweating profusely, his neck area was flushed, and his pupils were constricted.
22	One of the security officers, who has prior EMT experience, immediately recognized
23	Respondent's symptoms as those consistent with heroin use. When asked if he had any drugs or
24	medicines on him, Respondent said: "Yes, and I have some needles in my pocket." The security
25	officers performed a pat down and found a syringe containing a brown liquid resembling heroin,
26	10 new plastic syringes, a stainless steel spoon containing a brown tar like substance consistent
27	with heroin, and two small empty colored balloons.
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11. On or about September 24, 2008, two Los Angeles Police Officers. 1 assigned to Wilshire Narcotic Enforcement Detail, observed Respondent and another individual 2 riding bicycles that were not equipped with proper lighting devices. The officers made a 3 pedestrian stop. One of the officers observed Respondent drop a syringe needle containing a 4 brown liquid resembling heroin onto the ground directly in front of him. The officer also noted 5 that Respondent had very droopy eye lids, slow and slurred speech, and was sweating profusely. 6 The officer recognized these symptoms as being consistent with an individual under the influence 7 of a narcotic analgesic. During the subsequent arrest of Respondent, the officer recovered a piece 8 of foil containing an orange balloon with a black tarry residue resembling tar heroin from 0 Respondent's front pant pocket. The officer also recovered a tin bottle cap containing a black 10 11 tarry substance also resembling tar heroin wrapped in clear plastic from Respondent's right front pant pocket. Respondent admitted to the officer that he had purchased the heroin earlier that day 12 13 and that he had "shot up" in the restroom of the Wendy's on Sunset. Further, Respondent 14 admitted that he had been using heroin for approximately six (6) years at intervals of two (2) times per day. Respondent also informed the officer that on this same day, he self-administered 15 16 a "speedball" of cocaine and heroin. 17

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19 12. Respondent is subject to disciplinary action pursuant to Code section 20 4301, subdivision (f), on the grounds of unprofessional conduct, in that while licensed as a 21 pharmacy technician, Respondent committed acts involving moral turpitude, dishonesty, fraud, 22 deceit or corruption as follows:

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23 On or about November 25, 2007, Respondent was arrested for possession a. 24 of a narcotic substance, following the incident at a Jamba Juice store, as more particularly set 25 forth in paragraph 10, above.

On or about September 24, 2008, Respondent was arrested for possession 26 b. 27 of a controlled substance, following a pedestrian stop, as more particularly set forth in paragraph 28 11. above.

1	SECOND CAUSE FOR DISCIPLINE
2	(Violations of State Laws Regulating Controlled Substances)
3	13. Respondent is subject to disciplinary action pursuant to Code section
4	4301, subdivision (j), on the grounds of unprofessional conduct, in that while licensed as a
5	pharmacy technician, Respondent violated the following state laws regulating controlled
6	substances:
7	a. On or about November 25, 2007, and September 24, 2008, Respondent
8	possessed the controlled substance heroin in violation of Code section 4060.
9	b. On or about November 25, 2007, Respondent self-administered the
10	controlled substance heroin and on or about September 24, 2008, Respondent self-administered
11	the controlled substances cocaine and heroin in violation of Health and Safety Code section
12	11170.
13	THIRD CAUSE FOR DISCIPLINE
14	(Self-Administration of Controlled Substances)
15	14. Respondent is subject to disciplinary action pursuant to Code section
. 16	4301, subdivision (h), on the grounds of unprofessional conduct, in that on or about
17	November 25, 2007, and September 24, 2008, while licensed as pharmacy technician,
18	Respondent self-administered unknown quantities of the controlled substances cocaine and
19	heroin to an extent or in a manner dangerous or injurious to himself or the public.
20	PRAYER
21	WHEREFORE, Complainant requests that a hearing be held on the matters herein
22	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
23	1. Revoking or suspending Pharmacy Technician Registration Number
.24	TCH 35894, issued to Andre Balian;
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Ordering Andre Balian to pay the Board of Pharmacy the reasonable costs 2. of the investigation and enforcement of this case, pursuant to Code section 125.3; and, Taking such other and further action as deemed necessary and proper. 3. DATED: 10/27/09 VIRGIMIA HEROL Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant 03583110LA2008602052 Balian.Acc.wpd 2/23/09