- 3. On or about July 20, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3444, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board, which was and is: 1109 Briarcliff Road Monrovia, CA 91016.
- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124. On or about July 27, 2010, Respondent signed and returned a Domestic Return Receipt indicating receipt of the Accusation, and related service materials.
  - 5. 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.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3444.
  - 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 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 3444, finds that the charges and allegations in Accusation No. 3444, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$4,202.50 as of October 5, 2011.

# **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent Andre Gabriel Serhal has subjected his Pharmacy Technician Registration No. TCH 73079 to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:
- a. Respondent is subject to disciplinary action under Business and Professions Code sections 490, 4300, and 4301, subdivision (l), on the grounds of unprofessional conduct in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted or about April 9, 2009, after pleading nolo contendere to one (1) felony count of violating Health and Safety Code section 11359 [possession of marijuana for sale] in the criminal proceeding entitled *The People of the State of California v. Andre Gabriel Serhal* (Super. Ct. Los Angeles County, 2008, No. GA075479).
- b. Respondent is also subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in that on or about April 9, 2009, Respondent was convicted of a felony involving marijuana, a dangerous drug.
- c. Respondent is also subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct in conjunction with Business and Professions Code section 4060, in that on or about December 16, 2008, Respondent was found to be in possession of controlled substances without valid prescriptions including marijuana and hydrocodone tablets.
- d. Respondent is further subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that

Exhibit A

Accusation

1 2	EDMUND G. BROWN JR. Attorney General of California MARC D. GREENBAUM Supervising Deputy Attorney General MICHAEL A. CACCIOTTI		
3			
4	Deputy Attorney General State Bar No. 129533		
5	300 So. Spring Street, Suite 1702		
6	Los Angeles, CA 90013 Telephone: (213) 897-2932 Facsimile: (213) 897-2804		
7	Attorneys for Complainant	• • • •	
8	BEFORE T	HE	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 3444	
12	ANDRE GABRIEL SERHAL	Case No. 3444	
13	1109 Briarcliff Road	ACCUSATION	
14	Monrovia, CA 91016 Pharmacy Technician Registration No. TCH 73079	ACCUSATION	
15	Respondent.		
16		1	
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).		
22	2. On or about September 17, 2007, the Board issued Pharmacy Technician Registration		
23	No. TCH 73079 to Andre Gabriel Serhal (Respondent). The Pharmacy Technician Registration		
24	was in full force and effect at all times relevant to the charges brought herein and will expire on		
25	May 31, 2011, unless renewed.		
26	JURISDICTION		
27	3. This Accusation is brought before the Board under the authority of the following		
28	laws. All section references are to the Business and Professions Code unless otherwise indicated.		
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STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), 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.
- 5. Section 490 provides 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 4060 provides that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician or other licensed authorized professional.
  - 7. Section 4300 states that "[e] very license issued may be suspended or revoked."
  - 8. 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 any other state, or of the United States regulating controlled substances and dangerous drugs.
- "(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
- "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .
- "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . ."

# **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 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.

### CONTROLLED SUBSTANCES / DANGEROUS DRUGS

11. Cocaine is a Schedule I controlled substance as designated in Health and Safety Code section 11054(f)(1), and a dangerous drug according to section 4022.

1//

- 12. Lortab is a combination of hydrocodone and acetaminophen and therefore is a Schedule III controlled substance per Health and Safety Code section 11056(e)(4).
- 13. Marijuana is a Schedule I controlled substance as defined in Health and Safety Code section 11054(d)(13) and a dangerous drug according to section 4022.

## FIRST CAUSE FOR DISCIPLINE

# (Conviction of Substantially Related Crime)

- 14. Respondent is subject to disciplinary action under sections 490, 4300, 4301, subdivision (l), on the grounds of unprofessional conduct in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare, as follows:
- a. On or about April 9, 2009, after pleading nolo contendere, Respondent was convicted of one (1) felony count of violating Health and Safety Code section 11359 [possession of marijuana for sale] in the criminal proceeding entitled *The People of the State of California v. Andre Gabriel Serhal* (Super. Ct. Los Angeles County, 2008, No. GA075479). The Court sentenced Respondent in lieu of 90 days in jail to perform 30 days of Cal Trans or graffiti removal duty, placed him on three (3) years probation, ordered him to register as a convicted narcotics offender and carry proof of registration at all times, and ordered him to complete Penal Code section 296 requirements.
- b. The circumstances underlying the conviction are that on or about December 16, 2008, a search warrant was executed against Respondent who was under narcotic investigation by the Monrovia Police Department (MPD). Respondent was arrested after driving his vehicle away from his residence. Respondent was in possession of a digital scale "CE" and 4.98 grams of marijuana buds in his vehicle. Found in Respondent's bedroom were 96.79 grams of marijuana buds, a "Palmscale" digital scale, an unmarked pill bottle with 51 hydrocodone tablets, a plastic sandwich bags box, various writings recording "Pay and Owe's" and \$2,370 in cash. Respondent admitted to smoking a lot of weed, the marijuana was all his, giving some marijuana to his friends

and, the previous evening, purchasing \$500 worth of marijuana. Scrapings from one of the digital scales tested positive for cocaine.

#### SECOND CAUSE FOR DISCIPLINE

## (Felony Drug Conviction)

15. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in that on or about April 9, 2009, Respondent was convicted of a felony involving marijuana, a dangerous drug. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, subdivision a and b, inclusive, as though set forth fully.

# THIRD CAUSE FOR DISCIPLINE

# (Illegal Possession of Controlled Substances)

16. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct in conjunction with section 4060, in that on or about December 16, 2008, Respondent was in possession of controlled substances without valid prescriptions. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 - 16, inclusive, as though set forth fully.

## FOURTH CAUSE FOR DISCIPLINE

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

17. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 - 17, inclusive, as though set forth fully.

### FIFTH CAUSE FOR DISCIPLINE

### (Violating Provisions of the Pharmacy Law)

18. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated provisions of the Pharmacy Law. Complainant refers to and by this reference incorporates the allegations set

1	forth above in paragraphs 15 - 18, inclusive, as though set forth fully.	
2	DISCIPLINE CONSIDERATIONS	
3	19. To determine the degree of discipline, Complainant alleges that on or about	
4	June 23, 2004, in a prior criminal proceeding entitled The People of the State of California v.	
5	Andre Gabriel Serhal (Super. Ct. Los Angeles County, No. 4AL02884) Respondent was	
6	convicted of violating Penal Code section 242 (battery), a misdemeanor. The Court placed	
7	Respondent on three (3) years probation, ordered him to perform ten (10) days of Cal Trans duty	
8	and ordered him to perform ten (10) days graffiti removal.	
9	<u>PRAYER</u>	
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
11	and that following the hearing, the Board issue a decision:	
12	1. Revoking or suspending Pharmacy Technician Registration No. TCH 73079, issued	
13	to Respondent;	
14	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and	
15	enforcement of this case, pursuant to section 125.3; and	
16	3. Taking such other and further action as deemed necessary and proper.	
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19	DATED: 7/2/10 liginier Duckel	
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21	Board of Pharmacy Department of Consumer Affairs	
22	State of California  Complainant	
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