was in full force and effect at all times relevant to the charges brought in Accusation No. 4782 and will expire on March 31, 2015, unless renewed.

- 3. On or about November 22, 2013, Respondent was served by Certified and First Class Mail with copies of the Accusation No. 4782, 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. Respondent's address of record was and is: 43754 Sentry Lane, Lancaster, CA 93536.
- 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.
- 5. The aforementioned documents in Paragraph 3 that were served both by Certified Mail and First Class Mail were not returned by the U.S. Postal Service.
 - 6. 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.
- 7. 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. 4782.
 - 8. 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.
- 9. 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. 4782, finds that the charges and allegations in Accusation No. 4782, are separately and severally, found to be true and correct by clear and convincing evidence.

10. 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 \$1,722.50 as of January 3, 2014.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Marcus A. Digiovanna has subjected his Pharmacy Technician Registration No. TCH 48991 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) Business and Professions Code sections 4060 and 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct in that on or about December 15, 2011 and March 9, 2012, Respondent violated the Pharmacy Law by unlawfully possessing a controlled substance, to wit, cocaine.
- (b) Business and Professions Code section 4301, subdivision (h) on the grounds of unprofessional conduct in that on or about December 14, 2011, Respondent used a controlled substance, to wit, cocaine, in a manner dangerous or injurious to himself or the public.
- (c) Business and Professions Code section 4301, subdivision (j) and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of unprofessional conduct in that on or about December 14-15, 2011 and March 9, 2012, Respondent violated California rules regulating controlled substances when he unlawfully possessed and self-furnished cocaine without a prescription.
- (d) Business and Professions Code section 4301, subdivision (f) on the grounds of unprofessional conduct in that Respondent committed a dishonest act when on or about March 19, 2013, on his Request for Renewal of California Pharmacy Technician Registration, Respondent

1	answered "no" to the question: "Since you last renewed your license, have you had any license
2	disciplined by a government agency or any other disciplinary body; or have you been convicted
3	of any crime in any state, the USA and its territories, military court or a foreign country?"
4	Pursuant to Penal Code section 1210.1, subdivision (e)(3), Respondent was required to disclose
5	that on April 3, 2012 and June 20, 2012 he had pleaded guilty to violating Health and Safety
6	Code section 11530, subdivision (a).
7	ORDER
8	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 48991, heretofore
9	issued to Respondent Marcus A. Digiovanna, is revoked.
10	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11	written motion requesting that the Decision be vacated and stating the grounds relied on within
12	seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
14	This Decision shall become effective on March 10, 2014.
15	It is so ORDERED ON February 7, 2014.
16	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
17	STATE OF CALIFORNIA
18	
19	& C. Wussi
20	By
21	Board President
22	51428721,DOC DOJ Matter ID:LA2013510071
23	Attachment:
24	Exhibit A: Accusation
25	
26	
27	
28	

1	KAMALA D. HARRIS
2	Attorney General of California KAREN B. CHAPPELLE
3	Supervising Deputy Attorney General SYDNEY M. MEHRINGER
4	Deputy Attorney General State Bar No. 245282
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013
6	Telephone: (213) 897-2537 Facsimile: (213) 897-2804 E-mail: Sydney.Mehringer@doj.ca.gov Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY 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 A C C U S A T I O N
14	Pharmacy Technician Registration No. TCH
15	48991
16	Respondent.
17	Complainant alleges:
18	<u>PARTIES</u>
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.
Ì	1 Accusation

4. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

5. Section 492 of the Code states:

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

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

6. 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. 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."

- 7. Section 4300 the Code 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.
 - 8. 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.

"(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."
- 9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."
 - 10. Health and Safety Code section 11350, subdivision (a) states:
- "(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of 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 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 to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

REGULATORY PROVISIONS

11. 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."

CONTROLLED SUBSTANCES

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

COST RECOVERY

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.

FIRST CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

- 14. Respondent is subject to disciplinary action under Code sections 4060 and 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct in that on or about December 15, 2011 and March 9, 2012, Respondent violated the Pharmacy Law by unlawfully possessing a controlled substance, to wit, cocaine. The circumstances are as follows:
- 15. On or about December 15, 2011, during an investigation into a reported battery, a police officer entered Respondent's apartment. During a search of the living room, the officer observed that on top of the coffee table there were four small straws and a residue of white powder resembling cocaine. The officer further observed a clear Ziploc baggie and two large chunks of white substance resembling cocaine. Respondent admitted to the officer that he had a drug problem and that he had used some of the cocaine the night before. Respondent was subsequently arrested.
- 16. On or about April 3, 2012, in the criminal proceeding entitled *The People of the State of California v. Marcus Digiovanna* (Super. Ct. Los Angeles County, 2011, No. SA079532), in 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 Respondent's guilty plea and placed Respondent on 18 months Deferred Entry of Judgment. On or about July 13, 2012, the Court terminated Respondent's Deferred Entry of Judgment and reinstated his guilty plea. The Court sentenced Respondent to 3 years probation with terms and conditions pursuant to Proposition 36.

17. On or about March 9, 2012, while patrolling the campus of the University of
California, Los Angeles, a police officer observed Respondent sitting in the driver's seat of a
vehicle. The officer approached Respondent and asked if he had anything illegal in the vehicle.
Respondent handed the officer a small jar containing a white, powdery substance and admitted to
the officer that it was cocaine. The officer searched Respondent's person and recovered a blue
pipe with white residue resembling cocaine from his left front pant pocket. Respondent was
subsequently arrested.

18. On or about June 20, 2012, in the criminal proceeding entitled *The People of the State of California v. Marcus Digiovanna* (Super. Ct. Los Angeles County, 2011, No. SA0080753), in connection with the arrest on March 9, 2012, Respondent pleaded guilty to one felony count of violating Health and Safety Code section 11350, subdivision (a). The Court sentenced Respondent to 3 years probation with terms and conditions pursuant to Proposition 36.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Drugs)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) on the grounds of unprofessional conduct in that on or about December 14, 2011, Respondent used a controlled substance, to wit, cocaine, in a manner dangerous or injurious to himself or the public. Complainant incorporates by reference Paragraph 15 as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violating Drug Statutes)

20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j) and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of unprofessional conduct in that on or about December 14-15, 2011 and March 9, 2012, Respondent violated California rules regulating controlled substances when he unlawfully possessed and self-furnished cocaine without a prescription. Complainant incorporates by reference Paragraphs 15 and 17 as though fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(Dishonest Act)

- 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) on the grounds of unprofessional conduct in that Respondent committed a dishonest act. The circumstances are as follows:
- 22. On or about April 3, 2013, the Board received Respondent's Request for Renewal of California Pharmacy Technician Registration dated March 19, 2013. In response to the question "Since you last renewed your license, have you had any license disciplined by a government agency or any other disciplinary body; or have you been convicted of any crime in any state, the USA and its territories, military court or a foreign country?" Respondent answered "No." Respondent's answer was false because pursuant to Penal Code section 1210.1, subdivision (e)(3), he was required to disclose that on April 3, 2012 and June 20, 2012 he had pleaded guilty to violating Health and Safety Code section 11530, subdivision (a).

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 Phamacy Technician Registration Number TCH 48991, issued to Marcus A. Digiovanna;
- Ordering Marcus A. Digiovanna 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; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 11/13/13 VIRGINA HEROLD

VIRGINIA HEROL
Executive Officer
Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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Accusation