1			
2			
3			
4			
5			
6			
7			
8		RE THE PHARMACY	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	STATE OF CALIFORNIA		
11	The the Matter of the Assuration Assimption	Case No. 4820	
12	In the Matter of the Accusation Against:	DEFAULT DECISION AND ORDER	
13	BRANDON ABILLE FULINARA 17173 Big Oak Lane Verba Linda CA 22886	DEFAULT DECISION AND ORDER	
14	Yorba Linda, CA 92886 Pharmacy Technician Registration No. TCH 94185	[Gov. Code, §11520]	
15	94185		
16	Respondent.		
17			
18			
19	FINDINGS OF FACT		
20	1. On or about November 1, 2013, Complainant Virginia Herold, in her official capacity		
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed		
22	Accusation No. 4820 against Brandon Abille Fulinara (Respondent) before the Board of		
23	Pharmacy. (Accusation attached as Exhibit A.)		
24	2. On or about November 9, 2009, the l	Board of Pharmacy (Board) issued Pharmacy	
25	Technician Registration No. TCH 94185 to Respondent. The Pharmacy Technician Registration		
26	was in full force and effect at all times relevant to the charges brought in Accusation No. 4820		
27	and will expire on July 31, 2015, unless renewed		
28	///		
		1	
		DEFAULT DECISION AND ORDER	

1	3. On or about November 1, 2013, Respondent was served by Certified and First Class		
2	Mail copies of the Accusation No. 4820, Statement to Respondent, Notice of Defense, Request		
3	for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and		
4	11507.7) at Respondent's address of record which, pursuant to Business and Professions Code		
5	section 4100, is required to be reported and maintained with the Board. Respondent's address of		
6	record was and is 17173 Big Oak Lane, Yorba Linda, CA 92886.		
7	4. Service of the Accusation was effective as a matter of law under the provisions of		
8	Government Code section 11505, subdivision (c) and/or Business & Professions Code section		
9	124.		
10	5. The aforementioned documents were not returned by the U.S. Postal Service.		
11	6. Government Code section 11506 states, in pertinent part:		
12	(c) The respondent shall be entitled to a hearing on the merits if the respondent		
13	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		
14	constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.		
15	7. Respondent failed to file a Notice of Defense within 15 days after service upon him		
16	of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.		
17	4820.		
18	8. California Government Code section 11520 states, in pertinent part:		
19	(a) If the respondent either fails to file a notice of defense or to appear at the		
20	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		
21	respondent.		
22	9. Pursuant to its authority under Government Code section 11520, the Board finds		
23	Respondent is in default. The Board will take action without further hearing and, based on the		
24	relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as		
25	taking official notice of all the investigatory reports, exhibits and statements contained therein on		
26	file at the Board's offices regarding the allegations contained in Accusation No. 4820, finds that		
27	the charges and allegations in Accusation No. 4820, are separately and severally, found to be true		
28	and correct by clear and convincing evidence.		

DEFAULT DECISION AND ORDER

1	10. Taking official notice of its own internal records, pursuant to Business and	
2	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigatio	
3	and Enforcement is \$795.00 as of November 22, 2013.	
4	DETERMINATION OF ISSUES	
5	1. Based on the foregoing findings of fact, Respondent Brandon Abille Fulinara has	
6	subjected his Pharmacy Technician Registration No. TCH 94185 to discipline.	
7	2. The agency has jurisdiction to adjudicate this case by default.	
8	3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician	
9	Registration based upon the following violations alleged in the Accusation which are supported	
10	by the evidence contained in the Default Decision Evidence Packet in this case.:	
11	a. Respondent was convicted of Possession of a Controlled Substance methylenedioxy	
12	amphetamine, commonly known as MDMA or Ecstasy. (Court documents attached as Exhibit 4.)	
13	ORDER	
14	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 94185, heretofore	
15	issued to Respondent Brandon Abille Fulinara, is revoked.	
16	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a	
17	written motion requesting that the Decision be vacated and stating the grounds relied on within	
18	seven (7) days after service of the Decision on Respondent. The agency in its discretion may	
19	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.	
20	This Decision shall become effective on February 18, 2014.	
21	It is so ORDERED ON January 17, 2014.	
22	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
23	STATE OF CALIFORNIA	
24		
25	la C. Wussi	
26	By <u>STAN C. WEISSER</u>	
27	Board President	
28		
	3	

Ш

•

1	SD2013705572	
2	Attachment: Exhibit A: Accusation	
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
	4 DEFAULT DECISION AND ORDER	<u> </u>
ŀ	DEFAULT DECISION AND OKDER	* I

# Exhibit A

Accusation

KAMALA D. HARRIS		
Attorney General of California ALFREDO TERRAZAS		
Senior Assistant Attorney General		
JAMES M. LEDAKIS Senior Legal Analyst	. · · · · ·	
State Bar No. 132645	·	
110 West "A" Street, Suite 1100 San Diego, CA 92101		
P.O. Box 85266 San Diego, CA 92186-5266		
Telephone: (619) 645-2105		
Facsimile: (619) 645-2061 Attorneys for Complainant		
RE	ODF THE	
BEFORE THE BOARD OF PHARMACY		
DEPARTMENT O STATE O	F CONSUMER AFFAIRS F CALIFORNIA	
·		
In the Matter of the Accusation Against:	Case No. 4820	•
BRANDON ABILLE FULLINARA		
17173 Big Oak Lane Yorba Linda, CA 92886	ACCUSATION	
	ACCUBATION	
Pharmacy Technician Registration No. TCH 94185		
Responder	nt,	
Complainant alleges:		
P.	ARTIES	
1. Virginia Herold (Complainant) bri	ngs this Accusation solely in her official capacity	as
the Executive Officer of the Board of Pharma	by, Department of Consumer Affairs.	
	he Board of Pharmacy issued Pharmacy Technicia	an
	Abille Fullinara (Respondent). The Pharmacy	
	effect at all times relevant to the charges brought	
herein and will expire on July 31, 2015, unless		
///		
· · · · · · · · · · · · · · · · · · ·		•
111	1	
	Accus	atic

·		
1	JURISDICTION	
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
3	Consumer Affairs, under the authority of the following laws. All section references are to the	
4	Business and Professions Code unless otherwise indicated.	
5	4. Section 4300, subdivision (a) of the Code states "Every license issued may be	
6	suspended or revoked."	
7	5. Section 4300.1 of the Code states:	
8	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	
9	placement of a license on a retired status, or the voluntary surrender of a license by a license shall not deprive the board of jurisdiction to commence or proceed with any	
10	investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.	
11	STATUTORY PROVISIONS	
12	6. Section 4301 of the Code states:	
13	The board shall take action against any holder of a license who is guilty of	
14 15	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:	
16		
17	(j) The violation of any of the statutes of this state, or any other state, or	
18	of the United States regulating controlled substances and dangerous drugs.	
19		
20	(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	
21	pharmacy, including regulations established by the board or by any other state or federal regulatory agency.	
22	7. Section 4022 of the Code states	
23	Dangerous drug" or "dangerous device" means any drug or device unsafe	
24	for self-use in humans or animals, and includes the following:	
25	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.	
26	(b) Any device that bears the statement: "Caution; federal law restricts this	
27 28	device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.	
	2 Accusatio	

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006. 8. Section 4060 of the Code provides in pertinent part, that 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.

9.

1

2

3

4

5

6

7

8

9

10

17

18

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 of the Code provides, in pertinent part, that the Board may request the 11 administrative law judge to direct a licentiate found to have committed a violation or violations of 12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being 14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be 15 included in a stipulated settlement. 16

#### DRUGS

11. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a

Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and 19 is a dangerous drug pursuant to Business and Professions Code section 4022. 20

21 111 22

111

- 23 111
- 111 24
- 111 25
- 26 III

11127 III28

3

Accusation

## FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Illegal Possession of a Controlled Substance – Ecstasy – on January 31, 2013)

12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o) of the Code on the grounds of unprofessional conduct, in that he illegally possessed the controlled substance and dangerous drug Ecstasy (MDMA) without a prescription in violation of section 4060 of the Code and Health and Safety Code section 11377(a). The circumstances are as follows:

9 13. On January 31, 2013, at approximately 12:00 a.m., Fullerton Police Department
Officers observed a black Mazda traveling eastbound on Yorba Linda Boulevard west of Sapphire
Road in Fullerton, California, and observed the vehicle straddling the traffic lane which caused
another vehicle to abruptly change lanes to avoid a traffic collision. Officers initiated a traffic stop
and made contact with the driver (Respondent). Officers smelled a faint odor of an alcoholic
beverage emitting from inside the vehicle and noticed Respondent's eyes were bloodshot, red and
watery. Respondent denied to officers that he drank alcohol that evening.

16 14. Officers directed Respondent to exit the vehicle. Respondent complied to a consent
17 search of his person. Respondent told officers that there was a Gatorade bottle inside the vehicle
18 that contained a mixture of Gatorade and alcohol. Respondent told officers that there had been a
19 couple of "shady guys" in his vehicle earlier in the day and that the "shady guys" may have left
20 "something" inside the vehicle and defined the "something" as "ecstasy pills in the glove box."

15. Officers conducted a search of Respondent's vehicle and located a Bank of America
envelope in the vehicle's glove compartment which contained a clear plastic bag that held 155
small circular yellow pills which officers identified through their training and experience as
"Ecstasy." Officers continued searching the vehicle and located a clear plastic bag containing 100
clear plastic baggies which indicated to officers that the baggies, combined with the ecstasy pills,
were indicative of possession with the intent to sell.

27

111

28

1

2

3

4

5

6

7

8

4

Respondent admitted to officers that the ecstasy pills were his and that he had 16. purchased them for a friend. Respondent claimed to be the 'middle man" in the transaction and that he received \$1,500 from an unknown individual to purchase 155 Ecstasy pills from another unknown individual. Respondent was arrested for possession of controlled substances, possession for sale of controlled substances, and transportation for sale of controlled substances and booked at the Orange County Jail.

17. On or about June 7, 2013, in a criminal proceeding entitled People of the State of 7 California vs. Brandon Abille Fulinara, in the Superior Court of California, County of Orange, 8 North Justice Center, in Case No. 13NF0710, Respondent pled guilty to violating Health and 9 Safety Code section 11377(a) (possession of a controlled substance), to wit: MDMA, a felony. As 10 a result of a plea bargain, counts for violating Health and Safety Code section 11378 (possession 11 for sale of a controlled substance), and 11379(a) (sale or transportation of a controlled substance). 12 felonies, were dismissed. The Court deferred entry of judgment for 18 months and placed 13 Respondent on drug diversion pursuant to Penal Code section 1000. 14

#### PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 17 and that following the hearing, the Board of Pharmacy issue a decision:

Revoking or suspending Pharmacy Technician Registration Number TCH 94185 1. 18 issued to Brandon Abille Fullinara; 19

20 2. Ordering Brandon Abille Fulinara to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code 21 section 125.3; 22

5

Accusation

III23

1

2

3

4

5

6

15

- 11124
- 11125 III26
- 111 27

28

111

Taking such other and further action as deemed necessary and proper. 3. 10/21/13 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2013705572 70762366.doc 11, -16 б Accusation