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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. 3144		
12	MICHAEL MICHMALI			
13	1840 Woodview Ct Ceres, CA 95357	ACCUSATION		
14	Pharmacy Technician License No. TCH 61671			
15	Respondent.			
16				
17	Complainant alleges:			
18	PARTIE	<u>s</u>		
19	1. Virginia Herold (Complainan	) brings this Accusation solely in her official		
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.			
21	2. On or about March 24, 2005, the Board of Pharmacy issued Pharmacy			
22	Technician License Number TCH 61671 to Michael Michmali (Respondent). The Pharmacy			
23	Technician License was in full force and effect at all times relevant to the charges brought herein.			
24	It will expire on December 31, 2010, unless renewed.			
25	JURISDICTION			
26	3. This Accusation is brought before the Board of Pharmacy (Board),			
27	Department of Consumer Affairs, under the authority of the following laws. All section			
28	references are to the Business and Professions Code (Code) unless otherwise indicated.			
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4. Section 4011 of the Code provides that the Board shall administer and
 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
 Substances Act [Health & Safety Code, § 11000 et seq.].

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5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to 7 proceed with a disciplinary action during the period within which the license may be renewed, 8 restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license 9 that is not renewed within three years following its expiration may not be renewed, restored, or 10 reinstated and shall be canceled by operation of law at the end of the three-year period. Section 11 4402(e) of the Code provides that any other license issued by the Board may be canceled by the 12 Board if not renewed within 60 days after its expiration, and any license canceled in this fashion 13 may not be reissued but will instead require a new application to seek reissuance. 14

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## STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall
take action against any holder of a license who is guilty of "unprofessional conduct," defined to
include, but not be 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.

(g) Knowingly making or signing any certificate or other document that falsely
represents the existence or nonexistence of a state of facts.

(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.

(i) The violation of any of the statutes of this state, of any other state, or of the 1 2 United States regulating controlled substances and dangerous drugs. (1) The conviction of a crime substantially related to the qualifications, functions, 3 and duties of a licensee under this chapter. 4 (o) Violating or attempting to violate, directly or indirectly, or assisting in or 5 abetting the violation of or conspiring to violate any provision or term of this chapter or of the 6 applicable federal and state laws and regulations governing pharmacy, including regulations 7 established by the board or by any other state or federal regulatory agency. 8 8. Section 490 of the Code provides, in pertinent part, that the Board may 9 suspend or revoke a license when it finds that the licensee has been convicted of a crime 10 substantially related to the qualifications, functions or duties of the license. 11 9. California Code of Regulations, title 16, section 1770, states: 12 "For the purpose of denial, suspension, or revocation of a personal or facility 13 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions 14 Code, a crime or act shall be considered substantially related to the qualifications, functions or 15 duties of a licensee or registrant if to a substantial degree it evidences present or potential 16 unfitness of a licensee or registrant to perform the functions authorized by his license or 17 registration in a manner consistent with the public health, safety, or welfare." 18 19 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber. 20 Section 4060 of the Code provides, in pertinent part, that no person shall possess 21 11. any controlled substance, except that furnished upon a valid prescription/drug order. 22 Section 4324 of the Code, in pertinent part, makes it unlawful for a person 23 12. to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a 24 drug, or to have in his or her possession a drug secured by a forged prescription. 25 Health and Safety Code section 11150 provides, in pertinent part, that no 26 13. person other than an authorized prescriber shall write or issue a prescription. 27 28 ///

Health and Safety Code section 11157 provides that no person shall issue a
 prescription that is false or fictitious in any respect.

3 15. Health and Safety Code section 11170 provides that no person shall
4 prescribe, administer, or furnish a controlled substance for himself or herself.

16. Health and Safety Code section 11173, subdivision (a), provides that no
person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the
administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
or subterfuge; or (2) by the concealment of a material fact.

9 17. Health and Safety Code section 11175 makes it unlawful for any person to
10 obtain or possess a prescription that does not comply with the Uniform Controlled Subtances Act
11 [Health & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non12 compliant prescription, or to possess a controlled substance obtained by such a prescription.

18. Health and Safety Code section 11350, in pertinent part, makes it unlawful
to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055),
subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

16 19. Health and Safety Code section 11351, in pertinent part, makes it unlawful
17 to possess or purchase for sale, *inter alia*, any narcotic drug in Schedules III-V.

18 20. Health and Safety Code section 11368, in pertinent part, makes it unlawful
19 to forge or alter a prescription, to issue or utter an altered prescription, to issue or utter a
20 prescription bearing a forged or fictitious signature for any narcotic drug, to obtain a narcotic drug
21 by any forged, fictitious, or altered prescription, or to possess any narcotic drug secured by a
22 forged, fictitious, or altered prescription.

23 21. Health and Safety Code section 11550, in pertinent part, makes it unlawful
24 for any person to use or be under the influence of, *inter alia*, any narcotic drug in Schedules III-V,
25 except when administered by or under the direction of an authorized licensee.

26 22. Section 125.3 of the Code provides, in pertinent part, that the Board may 27 request the administrative law judge to direct a licentiate found to have committed a violation of 28 the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

1	CONTROLLED SUBSTANCES / DANGEDOUS DDUGS
1	CONTROLLED SUBSTANCES / DANGEROUS DRUGS
2	23. Section 4021 of the Code states:
3	"Controlled substance' means any substance listed in Chapter 2 (commencing wi
4	Section 11053) of Division 10 of the Health and Safety Code."
5	24. Section 4022 of the Code states, in pertinent part:
6	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for
7	self-use, except veterinary drugs that are labeled as such, and includes the following:
8	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing
9	without prescription,' 'Rx only,' or words of similar import.
10	····
11	"(c) Any other drug or device that by federal or state law can be lawfully dispens
12	only on prescription or furnished pursuant to Section 4006."
13	25. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand
14	names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a
15	Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)
16	and dangerous drug as designated by Business and Professions Code section 4022. The varying
17	compounds are also known generically as Hydrocodone with APAP. These are narcotic drugs
18	FACTUAL BACKGROUND
19	26. Between on or about November 1, 2005 and on or about April 11, 2007,
20	Respondent was employed as a pharmacy technician at RX Unlimited Pharmacy (PHY 44597)
21	San Francisco, CA. On or about April 11, 2007, Respondent was terminated due to suspicion h
22	diverted controlled substances and/or dangerous drugs from the pharmacy. On or about May 21
23	2007, RX Unlimited filed a DEA-106 form identifying listed controlled substances losses from
24	February 10, 2006 to April 11, 2007, including 5,800 tablets of Hydrocodone with APAP.
25	27. Between on or about April 25, 2007 and on or about May 10, 2007, on at
26	least six (6) occasions Respondent fraudulently transferred patient prescriptions by telephone an
27	without patient authorization from the RX Unlimited Pharmacy to several Walgreens Pharmacy
28	locations, and picked up Hydrocodone with APAP drug products not prescribed for him:
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On or about April 25, 2007, Respondent called in a prescription transfer of 1 a. 150 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient O.B.<sup>1</sup> from the RX 2 3 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; b. On or about May 1, 2007, Respondent called in a prescription transfer of 4 5 150 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient M.O. from the RX Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; 6 On or about May 1, 2007, Respondent called in a prescription transfer of 7 c. 150 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient A.M. from the RX 8 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; 9 On or about May 4, 2007, Respondent called in a prescription transfer of d. 10 150 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient D.H. from the RX 11 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; 12 On or about May 10, 2007, Respondent called in a prescription transfer of 13 e. 150 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient M.S. from the RX 14 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; and 15 On or about May 10, 2007, Respondent called in a prescription transfer of f. 16 50 tablets of Hydrocodone with APAP (10/325, generic Norco) for patient L.V. from the RX 17 Unlimited Pharmacy to a Walgreens Pharmacy, and then attempted to pick up the prescription. 18 19 28. On or about May 10, 2007, Respondent was arrested by the San Francisco Police as he attempted to pick up the prescription for patient L.V. Respondent was found to be in 20 possession of items including: eight (8) empty pill bottles with labels and patient names other 21 than Respondent's; six (6) Walgreens Personal Prescription Information Sheets for patients O.B., 22 M.O., A.M., D.H., M.S., and L.V.; five (5) Walgreens receipts for prescriptions, all for purchases 23 of Hydrocodone with APAP (10/325, generic Norco); one (1) completed telephone prescription 24 25 form in the name of patient O.B., written on RX Unlimited letterhead; one (1) bottle containing 151 tablets of Hydrocodone with APAP (10/325, generic Norco); one (1) bottle containing 45 26 tablets of Hydrocodone with APAP (5/500, generic Vicodin); one (1) tablet of Hydrocodone 27 with APAP (10/500, generic Lortab); and one (1) bottle of prescription cough syrup. 28

29. During interview(s) with San Francisco Police, Respondent admitted to an
 addiction to Hydrocodone with APAP products, including Norco, Vicodin, and their generics.
 He further admitted to calling in fraudulent transfer prescriptions and then picking them up, as
 described in paragraph 26 above. He admitted to consuming the controlled substances acquired in
 this manner, except for approximately thirty (30) tablets furnished to Respondent's friends.

30. Based on the conduct described in paragraphs 26 to 29 above, on or about
October 1, 2007, in a criminal case titled *People v. Michael Michmali*, Case No. 2335766 in San
Francisco County Superior Court, Respondent was charged with twelve (12) felonies: five (5)
counts of violating Penal Code section 459 (Burglary - Commercial, 2<sup>nd</sup> Degree); six (6) counts of
violating Health and Safety Code section 11368 (Generating and/or Using Forged or Altered
Prescriptions for Controlled Substances); and one (1) count of violating Health and Safety Code
section 11351 (Possession or Purchase for Sale of Controlled Substances).

31. On a date sometime between on or about March 24, 2008 and on or about
April 4, 2008, Respondent was employed for one day as a pharmacy technician at Reliable Drug
pharmacy (PHY 46431) in San Francisco, CA. Respondent was terminated the same day.

32. On or about April 4, 2008, Respondent returned to Reliable Drug, walked in
and out of the pharmacy area, and attempted to leave with a large bottle containing tablets of a
Hydrocodone with APAP product (Vicodin or its generic). He was apprehended by the staff of
the pharmacy, and was subsequently apprehended and arrested by the San Francisco Police.

33. Based on the conduct described in paragraphs 31 to 32 above, on or about
April 10, 2008, in a criminal case titled *People v. Michael Michmali*, Case No. 2362682 in San
Francisco County Superior Court, Respondent was charged with two (2) felonies: one (1) count of
violating Penal Code section 459 (Burglary - Commercial, 2<sup>nd</sup> Degree); and one (1) count of
violating Penal Code section 496(a) (Receiving or Buying Stolen Property - Hydrocodone). In
addition, pursuant to Penal Code section 12022.1, each count contained an additional allegation
that the felony was committed while he was on a release from custody in a felony offense.

34. On or about May 21, 2008, a Protective Order in Criminal Proceeding was
issued in Case No. 2362682 ordering Respondent to stay 150 yards away from Reliable Drug.

On or about August 25, 2008, a District Attorney motion to consolidate 35. 1 2 Case Nos. 2335766 and 2362682 for purposes of pre-trial and trial was granted. On or about October 2, 2008, Defendant pleaded guilty to one (1) count of 36. 3 violating Health and Safety Code section 11351 (Possession or Purchase for Sale of Controlled 4 Substances), a felony (from Case No. 2335766), and one (1) count of violating Penal Code section 5 459 (Burglary - Commercial, 2<sup>nd</sup> Degree), a felony (from Case No. 2362682). All of the 6 remaining counts from the consolidated case(s) were dismissed pursuant to the plea. 7 On or about November 10, 2008, the Superior Court ordered imposition of 37. 8 sentence suspended, in favor of a period of probation of 3 years, terms and conditions to include: 9 one (1) year in County Jail, with credit for 2 days served, and with the balance of time permitted 10 to be served in the Puente House residential (drug) treatment program; search conditions; fines, 11 fees, and costs, and continuance of the previously-issued stay-away order for Reliable Drug. 12 13 FIRST CAUSE FOR DISCIPLINE 14 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) 15 Respondent is subject to discipline under section 4301(f) of the Code in that 16 38. Respondent, as described in paragraphs 26 to 29 and 32 above, committed numerous acts 17 involving moral turpitude, dishonesty, fraud, deceit, or corruption. 18 SECOND CAUSE FOR DISCIPLINE 19 (Creation/Signature of False Documents) 20 Respondent is subject to discipline under section 4301(g) of the Code in 39. 21 that Respondent, as described in paragraphs 26 to 29 above, created and/or signed documents that 22 falsely represented the existence or nonexistence of a state of facts. 23 THIRD CAUSE FOR DISCIPLINE 24 (Self-Administration of Controlled Substance) 25 Respondent is subject to discipline under section 4301(h) of the Code, in 40. 26 that Respondent, as described in paragraphs 26 to 29 above, administered one or more controlled 27 substances to himself, including Hydrocodone with APAP products. 28

1	FOURTH CAUSE FOR DISCIPLINE	
2	• (Conviction of Substantially Related Crime(s))	
3	41. Respondent is subject to discipline under section 4301(l) and/or section 490	
4	of the Code, by reference to California Code of Regulations, title 16, section 1770, for the	
5	conviction of substantially related crime(s), in that as described in paragraphs 30 and 33 to 37	
6	above, on or about October 2 and/or November 10, 2008, in a criminal case titled <i>People v</i> .	
7	Michael Michmali, Case Nos. 2335766 and 2362682 (consolidated) in San Francisco County	
8	Superior Court, Respondent was convicted of one (1) count of violating Health and Safety Code	
9	section 11351 (Possession or Purchase for Sale of Controlled Substances), a felony, and one (1)	
10	count of violating Penal Code section 459 (Burglary - Commercial, 2 <sup>nd</sup> Degree), a felony.	
11	FIFTH CAUSE FOR DISCIPLINE	
12	(Furnishing of Controlled Substance)	
13	42. Respondent is subject to discipline under section 4301(j) and/or (o) and/or	
14	section 4059 of the Code in that Respondent, as described in paragraphs 26 to 29 and 32 above,	
15	furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or	
16	assisted or abetted furnishing of, a controlled substance.	
17	SIXTH CAUSE FOR DISCIPLINE	
18	(Possession of Controlled Substance)	
19	43. Respondent is subject to discipline under section 4301(j) and/or (o) and/or	
20	section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as	
21	described in paragraphs 26 to 29 and 32 above, possessed, conspired to possess, and/or assisted in	
22	or abetted possession of, a controlled substance, without a prescription.	
23	SEVENTH CAUSE FOR DISCIPLINE	
24	(Self-Administration/Use of Controlled Substance)	
25	44. Respondent is subject to discipline under section 4301(j) and/or (o) of the	
26	Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as	
27	described in paragraphs 26 to 29 above, self-administered/used, conspired to self-administer/use,	
28	and/or assisted in/abetted self-administration/use, of a controlled substance, without prescription.	
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1	EIGHTH CAUSE FOR DISCIPLINE	
2	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)	
3	45. Respondent is subject to discipline under section 4301(j) and/or (o) of the	
4	Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in	
5	paragraphs 26 to 29 and 32 above, obtained, conspired to obtain, and/or assisted in or abetted the	
6	obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.	
7	NINTH CAUSE FOR DISCIPLINE	
8	(Making, Uttering and/or Using False or Forged Prescriptions)	
9	46. Respondent is subject to discipline under section 4301(j) and/or (o) and/or	
10	section 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that	
11	Respondent, as described in paragraphs 26 to 29 above, falsely made, altered, forged, uttered,	
12	published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a	
13	(narcotic) drug, had in his or her possession a (narcotic) drug secured by a false, forged, fictitious	
14	or altered prescription, or conspired and/or assisted in or abetted any of these acts.	
15	TENTH CAUSE FOR DISCIPLINE	
16	(Issuance and/or Use of Invalid Prescription(s))	
17	47. Respondent is subject to discipline under section 4301(j) and/or (o) of the	
18	Code, and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as	
19	described in paragraphs 26 to 29 above, issued prescriptions without authority to do so, obtained	
20	or possessed an invalid prescription, obtained or possessed a controlled substance by means of	
21	such invalid prescription, or conspired and/or assisted in or abetted any of these acts.	
22	ELEVENTH CAUSE FOR DISCIPLINE	
23	(Possession or Purchase of Controlled Substance for Sale)	
24	48. Respondent is subject to discipline under section 4301(j) and/or (o) of the	
25	Code, and/or Health and Safety Code section(s) 11351, in that Respondent, as described in	
26	paragraphs 26 to 29 and 32 above, possessed or purchased a narcotic drug for sale, or conspired	
27	and/or assisted in or abetted such possession or purchase for sale.	
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1	TWELFTH CAUSE FOR DISCIPLINE		
2	(Unprofessional Conduct)		
3	49. Respondent is subject to discipline under section 4301 of the Code in that		
4	Respondent, as described in paragraphs 26 to 48 above, engaged in unprofessional conduct.		
5			
6	PRAYER		
7	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
8	alleged, and that following the hearing, the Board of Pharmacy issue a decision:		
9	A. Revoking or suspending Pharmacy Technician License Number TCH		
10	61671, issued to Michael Michmali (Respondent);		
11	B. Ordering Respondent to pay the Board reasonable costs of investigation and		
12	enforcement of this case, pursuant to Business and Professions Code section 125.3;		
13	C. Taking such other and further action as deemed necessary and proper.		
14	DATED: 3/25/09		
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16	hainin Herdd		
17	VIRGINIA HEROLD Executive Officer		
18	Board of Pharmacy Department of Consumer Affairs		
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