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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

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11 In the Matter of the Accusation Against:

Case No. 3232

12 **ANDRE BALIAN**
165 N. Michigan Street, No. 204
13 Pasadena, California 91106.

A C C U S A T I O N

14 Pharmacy Technician Registration
15 Number TCH 35894

Respondent.

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17 Virginia Herold ("Complainant") alleges:

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PARTIES

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1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

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Pharmacy Technician Registration

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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.

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STATUTORY PROVISIONS

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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)
4 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
9 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 licensee 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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1 11. On or about September 24, 2008, two Los Angeles Police Officers,
2 assigned to Wilshire Narcotic Enforcement Detail, observed Respondent and another individual
3 riding bicycles that were not equipped with proper lighting devices. The officers made a
4 pedestrian stop. One of the officers observed Respondent drop a syringe needle containing a
5 brown liquid resembling heroin onto the ground directly in front of him. The officer also noted
6 that Respondent had very droopy eye lids, slow and slurred speech, and was sweating profusely.
7 The officer recognized these symptoms as being consistent with an individual under the influence
8 of a narcotic analgesic. During the subsequent arrest of Respondent, the officer recovered a piece
9 of foil containing an orange balloon with a black tarry residue resembling tar heroin from
10 Respondent's front pant pocket. The officer also recovered a tin bottle cap containing a black
11 tarry substance also resembling tar heroin wrapped in clear plastic from Respondent's right front
12 pant pocket. Respondent admitted to the officer that he had purchased the heroin earlier that day
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)
15 times per day. Respondent also informed the officer that on this same day, he self-administered
16 a "speedball" of cocaine and heroin.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(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:

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

26 b. On or about September 24, 2008, Respondent was arrested for possession
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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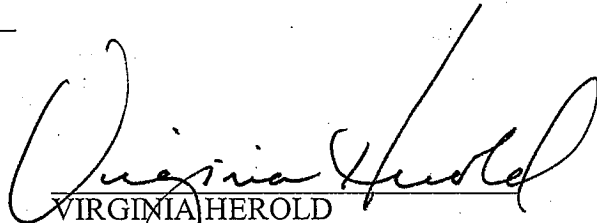
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2. Ordering Andre Balian to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 10/27/09



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant