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

10 In the Matter of the Accusation Against:

Case No. 3601

11 **SERJ SOUKAZ MARKARIAN**
12 **7766 N. Glenoaks Blvd.**
Burbank, CA 91504
13 **Pharmacist License No. RPH 54284**

A C C U S A T I O N

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the California State Board of Pharmacy.

20 2. On or about March 20, 2003, the Board of Pharmacy issued Pharmacist License
21 Number RPH 54284 to Serj Soukaz Markarian (Respondent). The Pharmacist License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on September
23 30, 2012, unless renewed.

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1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.

8 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
9 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
10 and devices."

11 8. Section 4301 of the Code states:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15

16 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
18 whether the act is a felony or misdemeanor or not.

19

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9 REGULATORY PROVISIONS

10 9. California Code of Regulations, title 16, section 1770, states:

11 "For the purpose of denial, suspension, or revocation of a personal or facility license
12 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
13 crime or act shall be considered substantially related to the qualifications, functions or duties of a
14 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
15 licensee or registrant to perform the functions authorized by his license or registration in a manner
16 consistent with the public health, safety, or welfare."

17 COST RECOVERY

18 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 DRUGS

23 11. Pregabalin, also known by the brand name Lyrica, is a Schedule V, non-narcotic
24 controlled substance under Health and Safety Code section 11058, and is classified as a
25 dangerous drug pursuant to Business and Professions Code section 4022.

26 12. Eszopiclone, also known by the brand name Lunesta, is a Schedule IV, non-narcotic
27 controlled substance under Health and Safety Code section 11057, and is classified as a
28 dangerous drug pursuant to Business and Professions Code section 4022.

1 13. Tadalafil, also known by the brand name Cialis, is not a scheduled drug, but is
2 classified as a dangerous drug pursuant to Business and Professions Code section 4022.

3 14. Celecoxib, also known by the brand name Celebrex, is not a scheduled drug, but is
4 classified as a dangerous drug pursuant to Business and Professions Code section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Substantially Related Convictions)**

7 15. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
8 (l), of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
9 Respondent was convicted of a crime substantially related to the qualifications, functions or
10 duties of a licensed pharmacist. Specifically, on or about September 2, 2008, after pleading nolo
11 contendere, Respondent was convicted of one misdemeanor count of violating Penal Code
12 Section 602.5(B) [entering dwelling without consent] in the criminal proceeding entitled *The*
13 *People of the State of California v. Serj Soukaz Markarian* (Super. Ct. Los Angeles County, 2008,
14 No. 7PY07737). Respondent was placed on probation for 36 months and was ordered to pay a
15 fine.

16 16. The circumstances are that on or about August 17, 2007, while working as a
17 pharmacist at CVS Pharmacy, Respondent was observed concealing the following
18 pharmaceuticals in his bag: Cialis 20 mg, Lyrica 50 mg, Lunesta 3mg and Celebrex 100 mg. A
19 CVS store manager waited for Respondent to exit the store at closing time and contacted him in
20 the parking lot. The store manager checked Respondent's bags and located five (5) bottles of
21 pharmaceuticals that had been taken from the pharmacy without permission and had not been
22 paid for nor prescribed to Respondent.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct: Dishonest Act)**

25 17. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
26 Code in that he committed an act involving moral turpitude, dishonesty, fraud, deceit or
27 corruption. Complainant refers to, and by this reference incorporates, the allegations set forth in
28 paragraphs 15 and 16, as though set forth fully.

