1	KAMALA D. HARRIS Attorney General of California		
2	KAREN B. CHAPPELLE Supervising Deputy Attorney General		
3	Michael Brown Deputy Attorney General		
4	State Bar No. 231237 300 So. Spring Street, Suite 1702		
5	Los Angeles, CA 90013 Telephone: (213) 897-8944		
6	Facsimile: (213) 897-2804		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
9			
10	STATE OF		
11	In the Matter of the Accusation Against:	Case No. 4301	
12	POULET DERZAKHARIAN	ACCUSATION	
13	634 E. Angeleno #B Burbank, CA 91501		
14	Pharmacy Technician Registration No. TCH 41640		
15			
16	Respondent.		
17			
18	Complainant alleges:		
19	<u>PARTIES</u>		
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
22	2. On or about December 27, 2002, the Board of Pharmacy (Board) issued Pharmacy		
23	Technician Registration No. TCH 41640 to Poulet Derzakharian (Respondent). The Pharmacy		
24	Technician Registration was in full force and effect at all times relevant to the charges brought		
25	herein and will expire on December 31, 2014, unless renewed.		
26	<u>JURISDICTION</u>		
27	3. This Accusation is brought before the Board under the authority of the following		
28	laws. All section references are to the Business and Professions Code unless otherwise indicated		
		1	

.27  STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
  - 5. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
  - 6. Section 492 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 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

2.7

operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

7. 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, 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."

- 8. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
  - 9. 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:

. . . .

"(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.

. . .

"(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

"(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 pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

#### **REGULATORY PROVISIONS**

10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

"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."

#### **HEALTH AND SAFETY CODE SECTIONS**

11. Health and Safety Code section 11550(a), states:

"No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,

specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances."

## COST RECOVERY

11. Section 125.3 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.

### **CONTROLLED SUBSTANCE**

- a. "Oxycodone," is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1) and is categorized as a dangerous drug pursuant to section 4022.
- b. "Vicodin", is a schedule III controlled substance as designated in Health and Safety Code section 11056, subdivision (e)(4) and is categorized as a dangerous drug pursuant to sections 4022.

#### FIRST CAUSE FOR DISCIPLINE

#### (Conviction of a Substantially Related Crime)

- 12. Respondent is subject to disciplinary action under sections 490, 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a licensee which to a substantial degree evidence the present or potential unfitness of a licensee to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare. The circumstances are as follows:
- a. On or about October 21, 2011, while patrolling an area known for a high level of narcotic activity by the Los Angeles Police Department, Respondent was contacted. The officer approached a parked vehicle and used a flashlight to illuminate the passenger side of the vehicle

where he observed a plastic baggie containing yellow pills tucked under Respondent's left thigh. The plastic baggie that was recovered contained 5 oval pills scored with "V-3610" resembling Vicodin and 13 blue round pills scored with "A-215" resembling Oxycodone. Respondent stated that D.H., the driver of the car, knew a friend that would be able to get Vicodin. She also stated that she was going to give D.H. \$40 for some Vicodin pills. Respondent was subsequently arrested for violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance]. Subsequently on or about October 25, 2011 a criminal case was filed against Respondent, charging her with one felony count of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The People of the State of California v. Poulet Derzakharian* (Super. Ct. Los Angeles County, 2011, No. LA069226). On or about October 28, 2011, after pleading guilty, the Court placed Respondent on deferred entry of judgment for a period of 3 years.

# SECOND CAUSE FOR DISCIPLINE

# (Possession of a Controlled Substance)

13. Respondent is subject to disciplinary action under section 4301, subdivision (j), for violating section 4060, on the grounds of unprofessional conduct, in that Respondent was found to be in possession of a controlled substance, as more fully described in paragraph 12, above.

### **PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician Registration No. TCH 41640, issued to Poulet Derzakharian;
- 2. Ordering Poulet Derzakharian to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
  - 3. Taking such other and further action as deemed necessary and proper.

26 | ///

27 | //

28 || ///

1	DATED: 3/1/3 ( ) regime David
2	//IDGINAN/TEROLD
3	Executive Officer  Board of Pharmacy  Department of Consumer Affairs  State of California
5	State of California  Complainant
6	LA2012506608
7	51231335.doc mc (1/28/13)
8	
9	
10	
11	
12	
13	
14 15	
16	
17	
18	
19	
20	
21	
22	
23	
24 25	
26	
27	
28	
	. 7

Accusation