	H			
1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California DIANN SOKOLOFF Supervising Deputy Attorney General SUSANA A. GONZALES Deputy Attorney General State Bar No. 253027 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2221 Facsimile: (510) 622-2270 Attorneys for Complainant BEFORE TI BOARD OF PHAN DEPARTMENT OF CONS	RMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10	In the Matter of the Accusation Against: Case	e No. 4402		
12	CALEB JERALD DANIEL			
13	187 Palm Avenue, #31 Marina, CA 93933	CUSATION		
14	Pharmacy Technician Registration No. TCH 93659			
15				
16	Respondent.			
17	Complainant alleges:			
18	PARTIES			
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity			
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.			
21	2. On or about August 25, 2009, the Board of Pharmacy issued Pharmacy Technician			
22	Registration Number TCH 93659 to Caleb Jerald Daniel (Respondent). The Pharmacy			
23	Technician Registration was in full force and effect at all times relevant to the charges brought in			
24	this Accusation and will expire on February 28, 2013, unless renewed.			
25	JURISDICTION			
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of			
27	Consumer Affairs, under the authority of the following laws. All section references are to the			
28	Business and Professions Code unless otherwise indicated.			
	1			
		Accusation		

4. Section 4011 of the Code provides that the Board shall administer and enforce both 1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances 2 Act [Health & Safety Code, § 11000 et seq.]. 3 5. Section 4300, subdivision (a), of the Code provides that every license issued by the 4 Board may be suspended or revoked. 5 6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the 6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of 7 jurisdiction to proceed with a disciplinary action during the period within which the license may 8 be renewed, restored, reissued or reinstated. 9 7. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is 10 not renewed within three years following its expiration may not be renewed, restored, or 11 reinstated and shall be canceled by operation of law at the end of the three-year period. Section 12 13 4402, subdivision (e), of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled 14 in this fashion may not be reissued but will instead require a new application to seek reissuance. 15 STATUTORY AND REGULATORY PROVISIONS 16 8. 17 Section 4301 of the Code states: "The board shall take action against any holder of a license who is guilty of unprofessional 18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 19 Unprofessional conduct shall include, but is not limited to, any of the following: 2021 "(j) The violation of any of the statutes of this state, of any other state, or of the United 22 23States regulating controlled substances and dangerous drugs. 24 "(1) The conviction of a crime substantially related to the qualifications, functions, and 25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 26(commencing with Section 801) of Title 21 of the United States Code regulating controlled 27substances or of a violation of the statutes of this state regulating controlled substances or 28 2

1 2 3	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		
3	record of conviction shall be conclusive evidence only of the fact that the conviction occurred.		
1	The board may inquire into the circumstances surrounding the commission of the crime, in order		
4	to fix the degree of discipline or, in the case of a conviction not involving controlled substances		
5	or dangerous drugs, to determine if the conviction is of an offense substantially related to the		
6	qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or		
7	a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning		
8	of this provision. The board may take action when the time for appeal has elapsed, or the		
9	judgment of conviction has been affirmed on appeal or when an order granting probation is made		
10	suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of		
11	the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not		
12	guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or		
13	indictment."		
14	9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or		
15	revoke a license when it finds that the licensee has been convicted of a crime substantially related		
16	to the qualifications, functions or duties of the license.		
17	10. California Code of Regulations, title 16, section 1770, states:		
18	"For the purpose of denial, suspension, or revocation of a personal or facility license		
19	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a		
20	crime or act shall be considered substantially related to the qualifications, functions or duties of a		
21	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a		
22	licensee or registrant to perform the functions authorized by his license or registration in a manner		
23	consistent with the public health, safety, or welfare."		
24	CONTROLLED SUBSTANCES / DANGEROUS DRUGS		
25	11. Section 4021 of the Code states:		
26	"Controlled substance' means any substance listed in Chapter 2 (commencing with Section		
27	11053) of Division 10 of the Health and Safety Code."		
28	12. Section 4022 of the Code states, in pertinent part:		

÷

	· ·	
	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,	
	except veterinary drugs that are labeled as such, and includes the following:	
	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without	
	prescription,' 'Rx only,' or words of similar import.	
	•••	
	"(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."	
	13. Marijuana is a Schedule I controlled substance as designated by Health and Safety	
	Code section 11054, subdivision (d)(13), and a dangerous drug as designated by Code section	
	4022. It is a hallucinogenic drug.	
	COST RECOVERY	
	9. Section 125.3 of the Code provides, 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.	
	<u>FIRST CAUSE FOR DISCIPLINE</u> (Unprofessional Conduct) (Bus. & Prof. Code § 4301)	
	14. Respondent has subjected his pharmacy technician's license to discipline under Code	
	section 4301 in that Respondent engaged in unprofessional conduct when he was arrested by	
+	officers from the Marina Police Department ("MPD") on or about January 22, 2012. The	
	circumstances are as follows:	
	15. On or about January 22, 2012, at approximately 5:20 p.m., an officer from the Marina	
	Police Department (Officer 1) was on patrol and was traveling behind Respondent's vehicle.	
	Officer 1 conducted a "bumper pace" with Respondent's vehicle and determined that he was	
	traveling 55 miles-per-hour in a 45 mile-per-hour zone. Officer 1 also observed Respondent's	
	vehicle drift into the bicycle lane and back. Finally, Officer 1 noticed that Respondent's vehicle	
	displayed expired registration tabs. Based upon these observations, Officer 1 initiated an	
	enforcement stop. As Officer 1 approached the driver's side of Respondent's vehicle, he was	
	4	

Accusation

almost overwhelmed by the odor of burnt marijuana coming from the car. Officer 1 then requested additional officers to respond and assist with the enforcement stop.

2

1

16. Officer 1 identified Respondent as the driver of the vehicle based upon his California driver's license. There were two passengers in the vehicle. Officer 1 asked Respondent if there 4 5 was any marijuana in the vehicle, and Respondent stated that there was, but that he had a cannabis club card. Officer 1 asked Respondent to produce the marijuana and the cannabis club card. 6 Respondent produced a large pickle jar from the floorboard beneath his seat. The jar contained a 7 green, leafy vegetable substance that Officer 1 recognized as marijuana. Respondent then 8 9 produced a physician's recommendation for medical marijuana, however he could not produce a cannabis club card. Respondent stated that the marijuana he surrendered to Officer 1 was all of 10 the marijuana in the vehicle. 11

17. Officer 1 instructed Respondent and his two passengers to exit the vehicle so that he 12 could search for additional contraband within the vehicle. During his search, Officer 1 found two 13 additional glass jars in a backpack on the driver's side floorboard, one of which contained a 14 green, leafy substance that Officer 1 recognized as marijuana. The other jar was empty. Officer 15 1 also located loose marijuana under the driver's seat, and marijuana and cigar paper in a brown 16 17 paper bag on the left rear floor board. Officer 1 searched the trunk and found suspected 18 marijuana in a clear plastic bag with the words "Poison Berry Kush" written in black marker. 19 Finally, Officer 1 found a digital scale that was disguised as an iPhone, with green, leafy residue on it. 20

18. 21 While Officer 1 was searching Respondent's vehicle, another MPD Officer, Officer 2, questioned Respondent. Officer 2 asked Respondent if he had a cellular phone in his possession, 22and Respondent stated that he did. Respondent unlocked the phone at Officer 2's request, and 23 24Officer 2 searched through the text messages. Officer 2 read various text messages which led him 25 to believe that Respondent was selling marijuana. Respondent admitted that he did not have a medical marijuana card and that he only possessed a recommendation letter, however he denied 26 selling marijuana. Respondent stated that he allowed his friends to use his phone, and they must 27have sent the text messages that Officer 2 questioned him about. 28

5

1 19. Respondent was arrested for transportation of marijuana and possession with intent to
 distribute marijuana, and was transported to the MPD. Because it was the end of Officer 1's shift
 when he returned to the MPD, he placed all of the evidence seized from Respondent's arrest in a
 temporary evidence locker. At the beginning of his next shift, on or about January 23, 2012,
 Officer 1 retrieved the evidence from the evidence locker. Using a digital scale, Officer 1
 weighed the marijuana seized from Respondent's vehicle and determined that the marijuana
 totaled 188.8 grams.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Conviction of Substantially Related Crime) (Bus. & Prof. Code § 4301, subd. (l))

20. Respondent has subjected his pharmacy technician's license to discipline under Code
section 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770,
in that he was convicted of a crime substantially related to the qualifications, functions or duties
of a licensee. Not only does his conviction involve statutes of this state regulating controlled
substances or dangerous drugs, but it also evidences to a substantial degree his present or
potential unfitness to perform the functions authorized by his license in a manner consistent with
the public health, safety, or welfare. The circumstances are as follows:

17 21. On or about February 24, 2012, in a criminal matter entitled *The People of the State*18 of *California v. Daniel, Caleb Jerald*, in the Monterey County Superior Court, Case No.

19 SS120137A, Respondent was convicted by plea of nolo contendre of violating Health and Safety

20 Code section 11357, subdivision (c) (possession of more than 28.5 grams of marijuana), a

misdemeanor. Respondent was placed on probation for three years and ordered to obey all laws,
submit to search and seizure as directed by a probation or peace officer, not use or possess drugs
without a prescription, and to pay various fees and fines.

24

25

8

9

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Statute Regulating Controlled Substances) (Bus. & Prof. Code § 4301, subd. (j))

26 22. Complainant realleges the allegations contained in paragraphs 14 through 21 above,
and incorporates them as if fully set forth.

28

1	23. Respondent has subjected his pharmacy technician's license to discipline under Code	
2	section 4301, subdivision (j), in that he has violated a statute of this state regulating controlled	
3	substances and dangerous drugs. The circumstances are set forth in paragraphs 14 through 21,	
4	above.	
5	PRAYER	
6	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
7	Accusation, and that following the hearing, the Board of Pharmacy issue a decision:	
8	1. Revoking or suspending Pharmacy Technician Registration Number TCH 93659,	
9	issued to Caleb Jerald Daniel;	
10	2. Ordering Caleb Jerald Daniel to pay the Board of Pharmacy the reasonable costs of	
11	the investigation and enforcement of this case, pursuant to Business and Professions Code section	
12	125.3; and	
13	3. Taking such other and further action as deemed necessary and proper.	
14	1	
15		
16	DATED: 12/14/12 inginia Und	
17	VIRGINIA HEROLD Executive Officer	
18	Board of Pharmacy Department of Consumer Affairs	
19 20	State of California Complainant	
20 21		
21	SF2012901068 90272043.doc	
23		
23		
25		
26		
27		
28		
	7	
	Accusation	