- 5. Service of the Accusation was effective as a matter of law under Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
 - 6. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 7. Respondent failed to file a Notice of Defense within 15 days after service of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4189.
 - 8. California Government Code section 11520 states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4189, finds that the charges and allegations in Accusation No. 4189, are separately and severally, found to be true and correct by clear and convincing evidence.
- 10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$3,360.00 as of July 12, 2012.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Manuel Joseph Teresi has subjected his Pharmacy Technician Registration No. TCH 5512 to discipline.
 - 2. The agency has jurisdiction to adjudicate this case by default.

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- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:
- a. Respondent's License is subject to revocation pursuant to Business and Professions Code section 822, based on mental or physical illness affecting competency, because in or about March 2011 Respondent engaged in a series of uncomfortable and/or threatening encounters with a (female) neighbor, which culminated with Respondent's entry into the neighbor's apartment, on or about March 21, 2011, and removal of all of his clothing. Respondent subsequently spoke with investigating police officers without any clothing on. He was arrested and subsequently charged with violating Penal Code section 314.1 (Indecent Exposure After Unlawful Entry), a felony. But on or about June 13, 2011 and/or August 17, 2011, a determination was made that Respondent was not mentally competent to stand trial, and proceedings in the criminal case were stayed.
- b. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, subdivision (l), for conviction of a substantially related crime, because on or about August 23, 2010, in *People v. Manuel Joseph Teresi*, Case No. C1067062 in Santa Clara County Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (Driving with a Blood Alcohol Level of 0.08% or more), a misdemeanor.
- c. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, subdivision (l), for conviction of a substantially related crime, because on or about August 23, 2010, in *People v. Manuel Joseph Teresi*, Case No. C1074269 in Santa Clara County Superior Court, Respondent was convicted of violating Vehicle Code section 14601.5, subdivision (a) (Driving With Revoked or Suspended License), a misdemeanor.
- d. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, because Respondent, as described above, engaged in unprofessional conduct.

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ORDER 1 IT IS SO ORDERED that Pharmacy Technician License No. TCH 5512, heretofore issued 2 to Respondent Manuel Joseph Teresi, is revoked. 3 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a 4 5 written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may 6 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute. 7 This Decision shall become effective on October 22, 2012. 8 9 It is so ORDERED ON September 21, 2012 10 **BOARD OF PHARMACY** DEPARTMENT OF CONSUMER AFFAIRS 11 STATE OF CALIFORNIA 12 (. Wussi 13 14 15 **Board President** 16 17 40566617.DOC DOJ Matter ID:SF2011203345 18 Attachment: Exhibit A: Accusation 19 20 21 22 23 24 25 26 27 28

Exhibit A

Accusation

1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFOR BOARD OF I DEPARTMENT OF CO	PHARMACY ONSUMER AFFAIRS	
10	In the Matter of the Accusation Against:	Case No. 4189	
11	MANUEL JOSEPH TERESI		
13	165 Monroe Street, No. 14 Santa Clara, CA 95050	ACCUSATION	
14	Pharmacy Technician License No. TCH 5512		
15	Respondent.		
16	Complainant alleges:	,	
17	PARTIES		
18	Virginia Herold (Complainant) brings	this Accusation solely in her official capacity	
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
20	2. On or about March 9, 1993, the Board of Pharmacy issued Pharmacy Technician		
21	License Number TCH 5512 to Manuel Joseph Teresi (Respondent). The Pharmacy Technician		
22	License was in full force and effect at all times relevant to the charges brought herein and will		
23	expire on September 30, 2012, unless renewed.		
24			
25	<u>JURISDICTION</u>		
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 (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.]. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 5. 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 proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(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 in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 6. 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:
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
- 8. California Code of Regulations, title 16, section 1770, provides, in pertinent part, that 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 her license or registration in a manner consistent with the public health, safety, or welfare.

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9. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- "(a) Revoking the licentiate's certificate or license.
- "(b) Suspending the licentiate's right to practice.
- "(c) Placing the licentiate on probation.
- "(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FIRST CAUSE FOR DISCIPLINE

(Mental or Physical Illness Affecting Competency)

- Respondent is subject to disciplinary action and/or to suspension, revocation, or probation of/on his Pharmacy Technician License Number TCH 5512, pursuant to section 822 of the Code, because his ability to practice safely under his License is impaired due to mental or physical illness affecting competency. The circumstances are as follows:
- a. On or about March 21, 2011, Santa Clara Police were dispatched to the apartment complex in Santa Clara, CA in which Respondent resided regarding a report of a burglary in progress. The female victim reported that Respondent, who lived in the apartment next door to the victim, had broken into her apartment and was completely naked in her apartment. She said that she had never invited Respondent into her apartment nor given him permission to enter.

- b. The victim further reported that this incident culminated a series of uncomfortable and/or threatening encounters with Respondent, who had expressed romantic interest in the victim for at least two years. The victim reported that over the last few months, Respondent had begun to make obscene and explicit comments to the victim, and veiled threats. The victim also told the police that approximately two weeks prior to March 21, 2011, her house key and mailbox key had disappeared from her keychain, and that on March 20, 2011, the victim returned home to find the Respondent standing in front of her door. On March 21, 2011, at approximately 12:55 a.m., the victim awoke from being asleep in her bedroom with the bedroom door closed to find Respondent inside her apartment, completely naked. After the victim yelled at him to leave, Respondent put on a pair of sweatpants and returned to his apartment next door.
- c. When police went to Respondent's apartment after speaking with the victim, he answered the door completely naked. The police instructed him to put on pants, which he did. Respondent was arrested on suspicion of crimes including Stalking (Penal Code section 646.9), Burglary (Penal Code section 459), and Indecent Exposure (Penal Code section 314).
- d. On or about March 23, 2011, in a criminal case titled *People v. Manuel Joseph Teresi*, Santa Clara County Superior Court Case No. C1103288, Respondent was charged by a Felony Complaint with violating Penal Code section 314.1 (Indecent Exposure After Unlawful Entry), a felony. But then on or about June 13, 2011, further proceedings in the criminal case were ordered suspended pursuant to Penal Code section 1368, based on an expression of doubt as to Respondent's mental competence, pending a hearing on the question of Respondent's mental competence to be conducted pursuant to Penal Code sections 1368.1 and 1369.
- e. On or about August 17, 2011, an order entered in the criminal case committed the Respondent to the custody of the California Department of Mental Health for a term of up to three (3) years, and ordered him transported to the state hospital no later than September 16, 2011. The case was scheduled for a further review of Respondent's custody status on January 13, 2013.

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SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 12. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about August 23, 2010, in the criminal case *People v. Manuel Joseph Teresi*, Case No. C1067062 in Santa Clara County Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (Driving with a Blood Alcohol Level of 0.08% or more), a misdemeanor. The conviction was entered as follows:
- a. On or about December 25, 2009, Santa Clara Police responded to a report of an automobile being driven recklessly in the rear parking lot and/or rear alleyway/carport behind an apartment complex, by a male driver. The witness(es) reported seeing the driver stumble out of the car, in what appeared to be an intoxicated state. When police arrived, the car was parked, but showed signs of significant damage, including front axle damage. Respondent was identified as the registered owner of the vehicle. When police contacted Respondent in his apartment, he had trouble standing up and exhibited several signs or symptoms of intoxication. He admitted that he had just driven his car home from a party, and that he had consumed several alcoholic beverages prior to driving. Respondent failed Field Sobriety Tests (FSTs) administered by the police, and was placed under arrest on suspicion of violating Vehicle Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol or Drugs). After Respondent was transported to police facilities, he was given two breath (PAS) tests, which showed 0.116% and 0.115% BAC.
- b. On or about January 22, 2010, Respondent was charged in Case No. C1067062 with violating (1) Vehicle Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol or Drugs), a misdemeanor and (2) Vehicle Code section 23152, subdivision (b) (Driving with a Blood Alcohol Level of 0.08% or more), also a misdemeanor.
- c. On or about August 23, 2010, Respondent pleaded *nolo contendere* to Count 2 (VC 23152(b)). Count 1 was dismissed per the plea. Imposition of sentence was suspended in favor of a period of court probation of three (3) years, on terms and conditions including nine (9) days in jail (1 day CTS), a 3-month First Offender Program, and fines and fees.

<u>PRAYER</u>

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

- 1. Revoking or suspending Pharmacy Technician License Number TCH 5512, issued to Manuel Joseph Teresi (Respondent);
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as is deemed necessary and proper.

DATED:	4/9/12		Leed
	•	VIRGINIA HEROLD	•
		Executive Officer	

Board of Pharmacy Department of Consumer Affairs

State of California

Complainant

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