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

12 In the Matter of the Accusation Against:

Case No. 4376

13 **BRANDI RENEE GUTIERREZ**
1930 W. College Ave., #45
14 San Bernardino, CA 92407

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 81632**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about March 5, 2009, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 81632 to Brandi Renee Gutierrez (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and expired on September 30, 2012, was cancelled, and has not been renewed.
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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4300.1 states that:

5 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
6 operation of law or by order or decision of the board or a court of law, the placement of a license
7 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
8 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending or revoking the license."

10 **STATUTORY PROVISIONS**

11 5. Section 118, subdivision (b), provides that the expiration of a license shall not deprive
12 the Board of jurisdiction to proceed with a disciplinary action during the period within which the
13 license may be renewed, restored, reissued or reinstated.

14 6. Section 490 states, in pertinent part:

15 "(a) In addition to any other action that a board is permitted to take against a licensee, a
16 board may suspend or revoke a license on the ground that the licensee has been convicted of a
17 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
18 or profession for which the license was issued.

19 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
20 discipline a licensee for conviction of a crime that is independent of the authority granted under
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
22 of the business or profession for which the licensee's license was issued.

23 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
24 conviction following a plea of nolo contendere. Any action that a board is permitted to take
25 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
26 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
27 made suspending the imposition of sentence, irrespective of a subsequent order under the
28 provisions of Section 1203.4 of the Penal Code."

1 7. Section 492 states, in pertinent part:

2 "Notwithstanding any other provision of law, successful completion of any diversion
3 program under the Penal Code, or successful completion of an alcohol and drug problem
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
6 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
7 division, from taking disciplinary action against a licensee or from denying a license for
8 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
9 record pertaining to an arrest. This section shall not be construed to apply to any drug diversion
10 program operated by any agency established under Division 2 (commencing with Section 500) of
11 this code, or any initiative act referred to in that division."

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

14 9. Section 4301 of the states, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of unprofessional
16 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
17 Unprofessional conduct shall include, but is not limited to, any of the following:

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

22 "(g) Knowingly making or signing any certificate or other document that falsely
23 represents the existence or nonexistence of a state of facts.

24 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
25 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
26 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
27 to the extent that the use impairs the ability of the person to conduct with safety to the public the
28 practice authorized by the license.

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2 "(j) The violation of any of the statutes of this state, or any other state, or of the United
3 States regulating controlled substances and dangerous drugs.

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5 "(l) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment."

22 **REGULATORY PROVISIONS**

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

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

3 **COST RECOVERY**

4 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 12. **CONTROLLED SUBSTANCE**

9 a. "Hydrocodone/APAP," is a Schedule II controlled narcotic substance pursuant to
10 Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 b. "Methamphetamine," is a Schedule II controlled substance as designated by Health
13 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
14 pursuant to section 4022.

15 c. "Tylenol with Codeine," is a Schedule III controlled substance as designated by
16 Health and Safety Code section 11056(e)(2) and is categorized as a dangerous drug pursuant to
17 section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l), and
21 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
22 Respondent was convicted of crimes and substantially related to the qualifications, functions or
23 duties of a pharmacy technician, as follows:

24 a. On or about January 19, 2012, after pleading guilty, Respondent was convicted of one
25 felony count of violating Penal Code section 470, subdivision (d) [forgery] in the criminal
26 proceeding entitled *The People of the State of California v. Brandi Renee Gutierrez* (Super. Ct.
27 San Bernardino County, 2012, No. FSB1101306). The Court sentenced Respondent to serve 120
28 days in county jail and placed her on 36 months probation, with terms and conditions. On or

1 about May 17, 2012, the Court revoked Respondent's probation for violation of probation term
2 number 1 (serve 120 days in jail), and reinstated her probation and modified the sentence to serve
3 180 days in jail as probation term number 1.

4 b. The circumstances surrounding the conviction are that on or about February 10, 2011,
5 Respondent's co-conspirator, Lenny Garcia, entered Nader's Market, in Loma Linda, California,
6 and attempted to cash a fraudulent payroll check at Respondent's direction. Respondent was
7 found in possession of several of the fraudulent payroll checks that were in her name.

8 c. On or about October 11, 2011, after pleading guilty, the Court entered a deferred
9 entry of judgment under Penal Code section 1000 for one felony count of violating Health and
10 Safety code section 11377, subdivision (a) [possession of a controlled substance,
11 Methamphetamine] in the criminal proceeding entitled *The People of the State of California v.*
12 *Brandi Renee Gutierrez* (Super. Ct. Riverside County, 2011, No. BAF1100570). The Court
13 placed Respondent on probation for 18 months and to complete a drug diversion program. On or
14 about July 11, 2012, the Court terminated the deferred entry of judgment for Respondent's
15 violation of the diversion program and resumed the criminal proceedings. The Court convicted
16 Respondent for violating Health and Safety code section 11377, subdivision (a) [possession of a
17 controlled substance, Methamphetamine], placed her on probation for 36 months and ordered her
18 to complete a substance abuse program pursuant to Penal Code section 1210 (Prop 36).

19 d. The circumstances surrounding the conviction are that on or about October 6, 2011,
20 during an investigation by the Riverside County Sheriff's Department, Respondent was contacted.
21 The officer conducted a records check and was advised that Respondent had an active felony
22 arrest warrant issued. Respondent was arrested for the outstanding warrant. During the booking
23 procedure, the officer asked Respondent if she had anything illegal on her person. Respondent
24 stated she had a "pipe", and a bag of "dope", hidden in her bra. When asked what she had in her
25 bra, she replied, "speed." When asked if by "speed" she meant Methamphetamine, Respondent
26 replied, "yes." When asked how long she had been using methamphetamine, she stated she had
27 been using it every day since approximately January 2010. Respondent was charged with
28 violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled

1 substance] and Health and Safety Code section 11364 [possession of controlled substance
2 paraphernalia].

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Use/Under the Influence of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivision (h) and
6 (j), in that, Respondent used and/or was under the influence of a controlled substance, as follows:

7 a. On or about May 4, 2011, during an investigation by the San Bernardino Sheriff's
8 Department, Respondent was contacted. While speaking to Respondent, she appeared to be
9 nervous, was very fidgety and could not keep her hands still. She was observed to have rapid
10 eyelid tremors and her tongue had a white coating. The officer told Respondent that she appeared
11 to be under the influence of a controlled substance and asked if she had ever used illegal
12 narcotics. She indicated that she had used narcotics several years ago. Upon further
13 investigation, Respondent stated, "okay, I smoked meth earlier in the day." When asked how
14 much Methamphetamine she had smoked, she said "a twenty sack," which is approximately 0.2
15 grams. Respondent was subsequently arrested for violating Health and Safety Code section
16 11350, subdivision (a) [possession of a controlled substance]. During a search of her purse, the
17 officer found a pink plastic container with numerous pills that included seven hydrocodone/APAP
18 and two Tylenol 3 with Codeine pills and one Trazadone HCl pill without prescriptions.
19 Respondent told officers that they were prescribed to her for stomach pain. During the booking
20 procedure, Respondent submitted to a blood test that tested positive for Amphetamines.

21 b. Subsequently, on or about July 6, 2011, criminal charges were filed in the criminal
22 proceeding entitled *The People of the State of California v. Brandi Renee Gutierrez* (Super. Ct.
23 San Bernardino County, 2011, No. MSB1102038), for violating one misdemeanor count of
24 Health and Safety Code section 11550(A) (under the influence of a controlled substance) and one
25 misdemeanor count of Business and Professions Code section 4060 (unlawful possession of a
26 controlled substance, hydrocodone/APAP, codeine, and Trazadone HCl, without a prescription.)
27 On or about January 19, 2012, the case was dismissed due to plea negotiation on case
28 FSB1101306.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of a Controlled Substance)**

3 15. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
4 (o), for violating statutes of this state regulating controlled substances and dangerous drugs, as
5 follows:

6 a. On or about May 4, 2011, Respondent was found to be in unlawful possession of
7 controlled substances, namely, Methamphetamine, in violation of Health and Safety Code section
8 11550, subdivision (a), and hydrocodone/APAP, Tylenol with Codeine, and Trazadone HCl
9 without a prescription, in violation of section 4060. Complainant refers to, and by reference
10 incorporates, the allegations set forth above in paragraph 13, subparagraphs (c) and (d), as though
11 set forth fully.

12 b. On or about October 6, 2011, Respondent was found to be in unlawful possession of a
13 controlled substance, namely, Methamphetamine, in violation of Health and Safety Code section
14 11377, subdivision (a) [possession of a controlled substance] and Health and Safety Code section
15 11364 [possession of controlled substance paraphernalia]. Complainant refers to, and by reference
16 incorporates, the allegations set forth above in paragraph 13, subparagraphs (c) and (d), as though
17 set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

20 16. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
21 that on or about February 10, 2011, Respondent committed acts involving moral turpitude,
22 dishonesty, fraud, or deceit. Complainant refers to, and by reference incorporates, the allegations
23 set forth above in paragraph 13, subparagraphs (a) and (b), as though set forth fully.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Forged Checks)**

26 17. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
27 that on or about February 10, 2011, Respondent knowingly made or signed any certificate or
28 other document that falsely represents the existence or nonexistence of a state of facts when she

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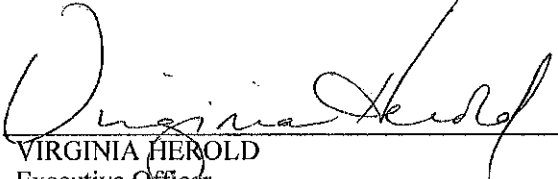
committed forgery. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph 13, subparagraphs (a) and (b), as though set forth fully.

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 81632, issued to Brandi Renee Gutierrez;
- 2. Ordering Brandi Renee Gutierrez 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.

DATED: 7/23/13



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

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