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

12 In the Matter of the Accusation Against:

Case No. 4814

13 **LINDA BRICENO CUETO**  
14 **a.k.a., LINDA BRICENO MARTINEZ**  
2851 S. La Cadena Dr. #112  
Colton, CA 92065

**A C C U S A T I O N**

15 Pharmacy Technician Registration  
16 No. TCH 66306

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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 19, 2005, the Board of Pharmacy issued Pharmacy  
23 Technician Registration No. TCH 66306 to Linda Briceno Cueto, also known as Linda Briceno  
24 Martinez (Respondent). The Pharmacy Technician Registration expired on September 30, 2011,  
25 and has not been renewed.

26 **JURISDICTION**

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 license or otherwise take disciplinary action against a person who holds a license, upon the  
2 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
3 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
4 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
5 and the board may inquire into the circumstances surrounding the commission of the crime in  
6 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
7 qualifications, functions, and duties of the licensee in question. "As used in this section, 'license'  
8 includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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

11 8. Section 4300.1 states:

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

17 9. Section 4301 states, in pertinent part:

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

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

21 . . . .

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

25 . . . .

26 "(h) The administering to oneself, of any controlled substance, or the use of any  
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
28 injurious to oneself, to a person holding a license under this chapter, or to any other person

1 or to the public, or to the extent that the use impairs the ability of the person to conduct with  
2 safety to the public the practice authorized by the license.

3 . . . .

4 “(j) The violation of any of the statutes of this state, of any other state, or of the United  
5 States regulating controlled substances and dangerous drugs.

6 “(k) The conviction of more than one misdemeanor or any felony involving the use,  
7 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
8 combination of those substances.

9 . . . .

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

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1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 11. **CONTROLLED SUBSTANCE**

15 a. "Marijuana", is a Schedule I controlled substance as designated by Health and Safety  
16 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to  
17 section 4022.

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

21 **FIRST CAUSE FOR DISCIPLINE**

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

23 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
24 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
25 Respondent has been convicted of crimes substantially related to the qualifications, functions or  
26 duties of a pharmacy technician, as follows:

27 a. On or about November 28, 2012, after pleading guilty, Respondent was convicted of  
28 one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while

1 having 0.08% or more, of alcohol, in her blood] in the criminal proceeding entitled *The People of*  
2 *the State of California v. Linda Briceno Cueto* (Super. Ct. San Bernardino County, 2012, No.  
3 TSB1202506). The Court sentenced Respondent to serve 36 days in San Bernardino County Jail  
4 and ordered pronouncement of Judgment withheld and conditional and revocable release granted  
5 for a period of 36 months, with terms and conditions.

6 The circumstances surrounding the conviction are that on or about January 30, 2012, during  
7 an investigation of a traffic collision by the California Highway Patrol, the victim, Guadalupe S.  
8 was contacted. Guadalupe indicated that Respondent struck her vehicle, when she exited the  
9 Sports Page Bar, on Lynwood Dr., in San Bernardino, CA. Respondent refused to stop and  
10 attempted to flee the scene of the accident. Guadalupe followed Respondent until she came to a  
11 stop. Respondent exited her vehicle, approached Guadalupe, pushed her up against the driver's  
12 door, and struck her in the right side of her face with a closed fist. While speaking to  
13 Respondent, the officer detected a strong odor of an alcoholic beverage emitting from her breath.  
14 She was observed to have bloodshot watery eyes, kept shaking her arms and legs, and was unable  
15 to sit still, and stand on her own, due to her level of intoxication.

16 Respondent admitted that she had been drinking and was subsequently arrested for violating  
17 Vehicle Code section 23152, subdivision (a) [driving while under the influence of alcohol or  
18 drugs], Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by  
19 weight of alcohol in her blood], Vehicle Code section 20002 [hit and run], Vehicle Code section  
20 14601.1, subdivision (a) [driving while driving privilege is suspended or revoked], and Penal  
21 Code section 242 [battery].

22 During a search of Respondent's vehicle, the officer located a 12-inch by 12 inch zip-lock  
23 sandwich baggie, which contained a green leafy substance resembling Marijuana on the  
24 floorboard of the right rear passenger seat. During the booking procedure, Respondent submitted  
25 to a blood test that resulted in a blood alcohol content level of 0.12%.

26 b. On or about November 15, 2012, pursuant to a plea agreement, after pleading guilty,  
27 Respondent was convicted of one misdemeanor count of violating Health and Safety Code section  
28 11150, subdivision (a) [under the influence of a controlled substance] in the criminal proceeding

1 entitled *The People of the State of California v. Linda Briceno Cueto* (Super. Ct. Riverside  
2 County, 2012, No. RIM121961). The Court deferred pronouncement of sentence for 16 months  
3 pending Respondent's completion of a drug diversion program. On or about January 4, 2013,  
4 Respondent failed to appear at a diversion hearing regarding proof of completion. The Court  
5 terminated diversion, resumed criminal proceedings, and issued a bench warrant for failure to  
6 appear in the amount of \$5,000.00.

7 The circumstances surrounding the conviction are that on or about October 30, 2012, during  
8 an investigation of drug activity at Fairmont Park, in Riverside, CA, by the Riverside Police  
9 Department, Respondent, a front seat passenger was contacted. While speaking to Respondent,  
10 she was observed to display physical symptoms consistent with CNS stimulant use. Based on  
11 Respondent's objective physical symptoms, she was arrested for violating Health and Safety  
12 Code section 11550, subdivision (a) [under the influence of a controlled substance].

### 13 **SECOND CAUSE FOR DISCIPLINE**

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

15 13. Respondent is subject to disciplinary action under sections 4301, subdivision (f), in  
16 that Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit, as  
17 follows:

18 a. On or about January 30, 2012, Respondent admitted that she had been drinking and  
19 was subsequently arrested for violating Vehicle Code section 23152, subdivision (a) [driving  
20 while under the influence of alcohol], Vehicle Code section 23152, subdivision (b) [driving while  
21 having 0.08% or more, by weight of alcohol in her blood], Vehicle Code section 20002 [hit and  
22 run], Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is suspended  
23 or revoked], and Penal Code section 242 [battery]. Complainant refers to, and by this reference  
24 incorporates, the allegations set forth above in paragraph 12, subparagraph (a), as though set forth  
25 fully.

26 b. On or about June 1, 2012, during an investigation of a child custody issue, by the  
27 Colton Police Department, the victim, J.M. was contacted. Upon arrival, the officer observed that  
28 J.M. was bleeding profusely from a large laceration around his right eye. J.M. indicated that

1 Respondent, his daughter hit him approximately 3 times with a closed fist, when he tried to break  
2 up a physical altercation between Respondent and his granddaughter. Respondent resides at the  
3 home with J.M., but had just left. Jane Doe, Respondent's daughter indicated that she and  
4 Respondent had a physical fight that J.M. tried to stop. J.M. had fallen to the ground and  
5 Respondent picked up a rock, smashed it on J.M.'s face, and kicked him several times.

6 Jane Doe indicated that Respondent hit her 5 to 7 times with a closed fist on her head, pull  
7 her down by her hair to the ground, resulting in scratches and a small lump on the right side of her  
8 head. Respondent was subsequently arrested for violating Penal Code section 245 [assault with a  
9 deadly weapon] and Penal Code section 273a, subdivision (a) [corporal injury to a child].

### 10 THIRD CAUSE FOR DISCIPLINE

#### 11 **(Dangerous Use of Alcohol and/or a Controlled Substance)**

12 14. Respondent is subject to disciplinary action under sections 4301, subdivisions (h) and  
13 (j), in that Respondent used alcoholic beverages and/or a controlled substance to an extent or in a  
14 manner dangerous or injurious to herself, another person, or the public, as follows:

15 a. On or about January 30, 2012, Respondent used alcoholic beverages to an extent or  
16 in a manner dangerous or injurious to herself, another person, or the public, when she operated a  
17 vehicle, while having approximately 0.12% of alcohol in her blood. Complainant refers to, and  
18 by this reference incorporates, the allegations set forth above in paragraph 12, subparagraph (a),  
19 as though set forth fully.

### 20 FOURTH CAUSE FOR DISCIPLINE

#### 21 **(Conviction of a Crime Involving the Consumption of Alcohol/Controlled Substance)**

22 15. Respondent is subject to disciplinary action under sections 4301, subdivision (k), in  
23 that Respondent was convicted of a crime involving the consumption of alcohol and/or a  
24 controlled substances, as follows:

25 a. On or about November 28, 2012, Respondent was convicted of violating Vehicle  
26 Code section 23152, subdivision (b) [driving while having 0.08% or more, of alcohol, in her  
27 blood]. Complainant refers to, and by this reference incorporates, the allegations set forth above  
28 in paragraph 12, subparagraph (a), as though set forth fully.

1 b. On or about November 15, 2012, Respondent was convicted of violating Health and  
2 Safety Code section 11150, subdivision (a) [under the influence of a controlled substance].  
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
4 paragraph 12, subparagraph (b), as though set forth fully.

5 **DISCIPLINARY CONSIDERATIONS**

6 16. In order to determine the degree of discipline, if any to be imposed on Respondent,  
7 Complainant alleges the following:

8 a. On or about January 11, 2012, after pleading guilty, Respondent was convicted of one  
9 misdemeanor count of violating Penal Code section 594, subdivision (b) [vandalism] in the  
10 criminal proceeding entitled *The People of the State of California v. Linda Briceno Cueto* (Super.  
11 Ct. San Bernardino County, 2012, No. MSB1102940). The Court sentenced Respondent to serve  
12 2 days in San Bernardino County Jail and ordered pronouncement of Judgment withheld and  
13 conditional and revocable release granted for a period of 36 months, with terms and conditions.  
14 The circumstances surrounding the conviction are that on or about July 3, 2011, Respondent  
15 smashed a kitchen window at the residence of the victim, D.M., in Yucaipa, CA, entered the  
16 residence, and stole an insurance check made payable to her son M.M., who has been diagnosed  
17 with a mental disability. The insurance check was a reimbursement in the total amount of  
18 \$6,203.06 from Infinity Insurance Company for his vehicle.

19 b. On or about October 4, 2011, after pleading guilty, Respondent was convicted of one  
20 misdemeanor count of violating Vehicle Code section 23103, subdivision (a) [reckless driving on  
21 highway] in the criminal proceeding entitled *The People of the State of California v. Linda*  
22 *Briceno Cueto* (Super. Ct. San Bernardino County, 2011, No. TSB1102115). The Court  
23 sentenced Respondent to serve 2 days in San Bernardino County Jail and ordered pronouncement  
24 of Judgment withheld and conditional and revocable release granted for a period of 24 months,  
25 with terms and conditions. The circumstances surrounding the conviction are that on or about  
26 June 7, 2011, during a traffic stop, by the San Bernardino County Sheriff's Department,  
27 Respondent was contacted. While speaking to Respondent, the officer observed Respondent to  
28 have slow speech, slowed movement, droopy eyes, and her pupils were below normal size. When

1 asked if she had taken any kind of medication, Respondent stated, "Yeah, I took two Soma and  
2 two Vicodin pills at 12:00 today." When asked if she knew she was not suppose to be driving a  
3 motor vehicle, while taking that type of medication, Respondent states, "Yes, I am sorry but I am  
4 always in pain." Respondent was subsequently arrested for violating Vehicle Code section  
5 23152, subdivision (a) [driving while under the influence of alcohol or drugs]. During the  
6 booking procedure, Respondent submitted to a blood test that resulted positive for Cannabinoids  
7 and Benzodiazepines.

8 c. On or about June 7, 2011, the Board issued Citation and Fine No. CI 2010 45913 to  
9 Respondent for violating Business and Professions Code section 4301, subdivision (h) and (l),  
10 resulting in the issuance of a \$500.00 fine regarding conviction case no. TSB1003590.  
11 Respondent has complied with the citation.

12 d. On or about March 3, 2011, after pleading guilty, Respondent was convicted of one  
13 misdemeanor count of violating Vehicle Code section 23103, subdivision (a) [reckless driving on  
14 highway] in the criminal proceeding entitled *The People of the State of California v. Linda*  
15 *Briceno Cueto* (Super. Ct. San Bernardino County, 2011, No. TSB1003590). The Court ordered  
16 pronouncement of Judgment withheld and conditional and revocable release granted for a period  
17 of 36 months, with terms and conditions.

18 The circumstances surrounding the conviction are that on or about September 28, 2011,  
19 during a traffic collision investigation, by the San Bernardino Police Department, Respondent  
20 was contacted. While speaking to Respondent, the officer observed Respondent to be disoriented.

21 When asked what happened, Respondent stated, "I don't know, I guess I fell asleep or  
22 something." Respondent admitted to taking two 350mg Soma pills an hour before the collision  
23 and one 1mg Xanax pill 20 minutes before the collision.

24 In addition, Respondent admitted to smoking Marijuana the previous day. Respondent was  
25 subsequently arrested for violating Vehicle Code section 23152, subdivision (a) [driving while  
26 under the influence of alcohol or drugs].  
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**PRAYER**

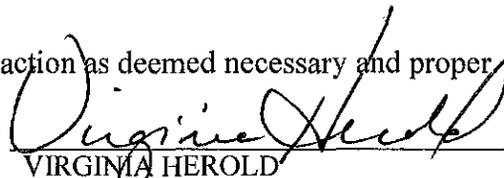
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 66306, issued to Linda Briceno Cueto, also known as Linda Briceno Martinez;

2. Ordering Linda Briceno Cueto to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/14



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

LA2013510094