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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 5544
12	GINA NICOLE BRITO 39440 Harvard Ln. A C C U S A T I O N
13	Palmdale, CA 93551
14	Pharmacy Technician Registration No. TCH 115393
15	Respondent.
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18	Complainant alleges:
19	PARTIES
20	1.I Virginia Herold ("Complainant") brings this Accusation solely in her official capacity I
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").
22	2.I On or about September 2, 2011, the Board issued Pharmacy Technician RegistrationI
23	No. TCH 115393 to Gina Nicole Brito ("Respondent"). The Pharmacy Technician Registration
24	expired on July 21, 2015, and was canceled on November 1, 2015.
25	JURISDICTION
26	3.I This Accusation is brought before the Board under the authority of the followingI
27	laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28	indicated.
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1	4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
2	chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et secq.)] and the Uniform
3	Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
4	Safety Code)."
5	5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
6	license issued may be suspended or revoked."
7	6. Section 4300.1 of the Code states:
8	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9	operation of law or by order or decision of the board or a court of law, the placement of a license
10	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
11	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
12	proceeding against, the licensee or to render a decision suspending or revoking the license."
13	7. Section 4402(e) of the Code states, in pertinent part:
14	"(e) Any other license issued by the board may be canceled by the board if the license is not
15	renewed within 60 days after its expiration. Any license canceled under this subdivision may not
16	be reissued. Instead, a new application will be required."
17	STATUTORY PROVISION
18	8. Section 4301 of the Code states, in pertinent part:
19	"The board shall take action against any holder of a license who is guilty of unprofessional
20	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
21	Unprofessional conduct shall include, but is not limited to, any of the following:
22	• • • •
23	"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
24	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
25	whether the act is a felony or misdemeanor or not.
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27	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
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1	oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2	to the extent that the use impairs the ability of the person to conduct with safety to the public the
3	practice authorized by the license.
4	• • • •
5	"(j) The violation of any of the statutes of this state, or any other state, or of the United
6	States regulating controlled substances and dangerous drugs"
7	<u>COST RECOVERY</u>
8	9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9	administrative law judge to direct a licentiate found to have committed a violation or violations of
10	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11	enforcement of the case, with failure of the licentiate to comply subjecting the license to not
12	being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
13	may be included in a stipulated settlement.
14	CONTROLLED SUBSTANCE / DANGEROUS DRUG
15	10. Methamphetamine is a Schedule II controlled substance pursuant to Health and
16	Safety Code section 11055, subdivision (d)(2).
17	11. Heroin is a Schedule I controlled substance pursuant to Health and Safety Code
18	section 11054, subdivision (c)(11).
19	FIRST CAUSE FOR DISCIPLINE
20	(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)
21	12. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
22	on the grounds of unprofessional conduct in that Respondent committed acts involving moral
23	turpitude, dishonesty, fraud, deceit, or corruption, as follows:
24	a. On or about January 20, 2014, Los Angeles County Sheriff's Department deputies
25	responded to a report of a child being exposed to drug use at an apartment. Upon arrival, the
26	officers saw a man come to the front door and then quickly run to a bedroom and shut the door.
27	After several attempts to get the resident's attention, Respondent answered with a baby in her
28	arms. The officers asked Respondent to open the door, but she refused and kept looking back
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towards the bedroom where the man entered. The officers informed Respondent that they need to 1 2 check on the child's welfare and to see the man in the bedroom. Respondent refused to cooperate and stated the man was not in the apartment. After several minutes, Respondent allowed the 3 officer to search the apartment. After conducting a search, the officers learned that the man fled 4 through an open window. The officers observed that the bedrooms had large amounts of 5 clothing, trash, and other items piled up on the floors and in the baby's crib. They also found a 6 glass pipe with a white crystalline residue resembling methamphetamine, a miniature scale, and 7 numerous empty plastic "bindle baggies," commonly used to package controlled substances. The 8 officers further observed that Respondent appeared to be under the influence of a controlled 9 substance as she was unable to stand still, was extremely nervous, and her speech was rapid. 10 Respondent informed the officers that she probably have drugs in her and refused to submit to a 11 urine test. Respondent was arrested for violating Penal Code section 273A, subdivision (a) [child 12 endangerment]. Furthermore, a misdemeanor complaint was filed against Respondent for 13 violating Health and Safety Code section 11550, subdivision (a) [under the influence of a 14 controlled substance, to wit, methamphetamine], in a criminal proceeding entitled *The People of* 15 the State of California v. Gina Nicole Brito (Super. Ct. L.A. County, 2014, No. 4AV00440). The 16 Court ordered Respondent to enroll in an outpatient substance abuse program. On or about 17 August 27, 2014, after the proof of completion of the drug diversion program was filed, the Court 18 dismissed the case pursuant to Penal Code section 1385. 19

On or about February 12, 2014, Los Angeles Sheriff's Department deputies received b. 20information that a man was selling narcotics from an apartment that was rented to Respondent. 21 While conducting a surveillance of the apartment, the officers observed vehicle traffic consistent 22 with the sales of narcotics. The officers entered the apartment to conduct a parole search on the 23 man. The man walked quickly into a bedroom and threw the items out the window. The officers 24 recovered nine plastic binders (a plastic bag used to package a controlled substance) containing 25 heroin that the man threw out the window. The officers also found a handwritten rental 26 agreement between Respondent and the man. Respondent informed the deputies that the man 27 was living with her and she knew that he was selling heroin. She further told the deputies that 28

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1	she received \$300 from the man because she needed money. Respondent was arrested and a
2	felony complaint was filed against Respondent for violating Health and Safety Code section
3	11366 [open and maintain a place for the purpose of selling, giving away, and using a controlled
4	substance, to wit, heroin] in a criminal proceeding entitled The People of the State of California
5	v. Gina Nicole Brito (Super. Ct. L.A. County, 2014, No. MA062119). On or about April 17,
6	2014, the Court dismissed the case pursuant to Penal Code section 1385.
7	SECOND CAUSE FOR DISCIPLINE
8	(Use of Controlled Substance)
9	13. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
10	on the grounds of unprofessional conduct, in that on or about January 20, 2014, Respondent
11	administered methamphetamine, a controlled substance, to herself to the extent or in a manner as
12	to be dangerous or injurious to herself or others. Complainant refers to and by this reference
13	incorporates the allegations set for above paragraph 11, subdivision (a), inclusive, as though set
14	forth fully.
15	THIRD CAUSE FOR DISCIPLINE
16	(Unprofessional Conduct - Violating Drug Statutes)
17	14. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
18	on the grounds of unprofessional conduct, in that Respondent violated statutes regulated
19	controlled substances. Complainant refers to and by this reference incorporates the allegations
20	set for above paragraph 11, and all subparagraphs, inclusive, as though set forth fully.
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1	PRAYER
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3	and that following the hearing, the Board issue a decision:
4	1. Revoking or suspending Pharmacy Technician Registration No. TCH 115393, issued
5	to Gina Nicole Brito;
6	2. Ordering Gina Nicole Brito to pay the Board the reasonable costs of the investigation
7	and enforcement of this case, pursuant to Code section 125.3; and
8	3. Taking such other and further action as deemed necessary and proper.
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11	DATED: 121116 Ungine Herold
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13	Department of Consumer Affairs State of California
14	Complainant
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