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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **WERNER ERNESTO ESCOBAR**
639 N. Heliotrope Dr., Apt C
13 Los Angeles, CA 74320
14 Pharmacy Technician Registration No. TCH
74320
15
16 Respondent.

Case No. 5590
A C C U S A T I O N

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 ("Board").
22 2. On or about February 6, 2007, the Board issued Pharmacy Technician Registration
23 No. TCH 74320 to Werner Ernesto Escobar, aka Werner E. Escobar Rivera ("Respondent"). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on June 30, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300.1 of the Code states:

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

11 5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
12 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
13 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
14 Safety Code)."

15 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
16 license issued may be suspended or revoked."

17 **STATUTORY PROVISIONS**

18 7. 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:

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

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1 **COST RECOVERY**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol)**

10 9. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
11 on the grounds of unprofessional conduct, in that Respondent administered alcoholic beverage to
12 himself to the extent or in a manner as to be dangerous or injurious to himself or others.

13 a. On or about June 29, 2014, California Highway Patrol officers responded to a vehicle
14 fire on the freeway. Respondent and three other individuals were observed running away from the
15 scene. Upon contact, one of the passengers admitted that the vehicle belonged to the
16 Respondent's father and that Respondent was driving the vehicle. Respondent denied driving the
17 vehicle. He claimed his father knew he took the vehicle. Respondent admitted consuming
18 alcoholic beverages and the police could smell the odor of alcohol emitting from the Respondent's
19 breath. The Respondent had red and watery eyes and was unsteady. Respondent's breath test
20 resulting in a blood alcohol concentration of 0.198% and 0.206%.

21 **DISCIPLINE CONSIDERATIONS**

22 10. To determine the degree of discipline, if any, to be imposed on the Respondent,
23 Complainant alleges:

24 a. On or about March 8, 2007, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Los Angeles Municipal Code section 41.24,
26 subdivision (a) [unlawfully entering private property], in the criminal proceeding entitled *The*
27 *People of the State of California v. Werner Escobar* (Super. Ct. L.A. County, 2007, No.
28 7CA06105). The Court sentenced Respondent to three days in jail, and placed him on 12 months

1 probation with terms and conditions.

2 b. The circumstances underlying the conviction are that on or about March 6, 2007, Los
3 Angeles Police Department officers observed Respondent holding a beer and standing with other
4 individuals at a location that was clearly marked with a "No Trespassing" sign.

5 c. On or about April 30, 2009, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 242 [battery] in the criminal
7 proceeding entitled *The People of the State of California v. Werner Escobar* (Super. Ct. L.A.
8 County, 2009, No. BA344181). The court sentenced Respondent to two days in jail, placed him
9 on three years probation with terms and conditions, ordered him to complete 25 days of
10 community service, and ordered him to make a restitution to the victim. On or about November 8,
11 2011, the court dismissed the case pursuant to Penal Code section 1203.4.

12 d. The circumstances underlying the conviction are that on or about July 5, 2008, Los
13 Angeles Police Department officers responded to an assault case. Respondent was engaged in a
14 road rage incident. Respondent sped up to the victim's vehicle and yelled profanities. As the
15 victim tried to get away, the Respondent crashed his vehicle into the victim's vehicle. The victim
16 stopped her vehicle and opened her car door to evaluate the damage. The Respondent then
17 rammed his vehicle into the victim's opened door. Furthermore, the Respondent slapped the
18 victim's left jaw and cheek area using his open right hand.

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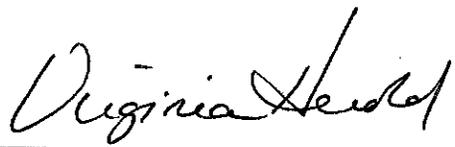
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 74320, issued to Werner Ernesto Escobar, aka Werner E. Escobar Rivera;
2. Ordering Werner Ernesto Escobar, aka Werner E. Escobar Rivera to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/3/16



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

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