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

11 In the Matter of the Accusation Against:

Case No. 5632

12 **BRYANNA NICOLE PORTER**
13 **1364 Oregon Creek Way**
14 **Plumas Lake, CA 95971**

ACCUSATION

15 **Pharmacy Technician Registration No.**
16 **119389**

Respondent.

17
18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

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

22 2. On or about May 29, 2012, the Board issued Pharmacy Technician Registration
23 Number 119389 to Bryanna Nicole Porter ("Respondent"). The registration was in full force and
24 effect at all times relevant to the charges brought herein. The registration expired on October 31,
25 2015, and was cancelled on February 7, 2016 pursuant to Business and Professions Code section
26 4402(e).

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1 **JURISDICTION**

2 3. Business and Professions Code ("Code") section 4300 provides, in pertinent part, that
3 every license issued by the Board is subject to discipline, including suspension or revocation.

4 4. Code section 4300.1 states:

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

9 **STATUTORY PROVISIONS**

10 5. Code section 4301 states, in pertinent part:

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

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

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

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

6. Code section 4060 states:

A person shall not possess any controlled substance, except that furnished to a

1 person upon the prescription of a physician, dentist, podiatrist, optometrist,
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
3 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
4 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
5 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
6 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
7 possession of any controlled substance by a manufacturer, wholesaler, third-party
8 logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
9 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
10 physician assistant, if in stock in containers correctly labeled with the name and
11 address of the supplier or producer.

12 This section does not authorize a certified nurse-midwife, a nurse practitioner, a
13 physician assistant, or a naturopathic doctor, to order his or her own stock of
14 dangerous drugs and devices.

15 7. Health and Safety Code section 11350 states, in part:

16 (a) Except as otherwise provided in this division, every person who
17 possesses (1) any controlled substance specified in subdivision (b) or (c), or
18 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or
19 (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of
20 Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
21 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
22 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
23 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
24 of Section 1170 of the Penal Code.

25 8. Health and Safety Code section 11364 states, in part:

26 (a) It is unlawful to possess an opium pipe or any device, contrivance,
27 instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled
28 substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph
(2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic
drug classified in Schedule III, IV, or V.

9. Health and Safety Code section 11377 states, in part:

(a) Except as authorized by law and as otherwise provided in subdivision
(b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
Division 2 of the Business and Professions Code, every person who possesses any
controlled substance which is (1) classified in Schedule III, IV, or V, and which is not
a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs
(13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision
(f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,
licensed to practice in this state, shall be punished by imprisonment in a county jail
for a period of not more than one year or pursuant to subdivision (h) of Section 1170
of the Penal Code.

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1 **COST RECOVERY**

2 10. Code section 125.3 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.

6 **DRUGS**

7 11. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
8 Safety Code section 11055, subdivision (d)(2), and a dangerous drug within the meaning of Code
9 section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Conviction of Crimes)**

12 12. Respondent is subject to discipline pursuant to Code section 4301(l), on the grounds
13 of unprofessional conduct, in that Respondent was convicted of crimes which are substantially
14 related to the qualifications, functions, or duties of a pharmacy technician, as follows:

15 a. On or about September 18, 2014, in the case of *People v. Bryanna Porter*, (Super. Ct.
16 Butte County, 2014, Case No. CM041767), Respondent was convicted by the Court on her plea
17 of guilty of violating Health and Safety Code section 11377(a) (possession of a controlled
18 substance, to wit: Methamphetamine), a felony, and 11364.1(a)(1) (possession of smoking
19 device), a misdemeanor. The circumstances of the crime were that on or about August 14, 2014,
20 during a routine traffic stop, an officer found Methamphetamine in Respondent's purse.

21 b. On or about June 18, 2015, in the case of *People v. Bryanna Porter*, (Super. Ct. Butte
22 County, 2015, Case No. SCR102524), Respondent was convicted by the Court on her plea of no
23 contest of violating Penal Code section 530.5(e) (mail theft), a misdemeanor. The circumstances
24 of the crime were that on or about April 7, 2015, Respondent stole delivered mail packages from
25 the porch of a residence.

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1 **SECOND CAUSE FOR DISCIPLINE**

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

3 13. Respondent is subject to discipline pursuant to Code section 4301(f), on the grounds
4 of unprofessional conduct, in that Respondent committed acts involving moral turpitude,
5 dishonesty, fraud, deceit, and/or corruption, as more particularly set forth above in paragraph 12,
6 subdivision (b).

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Violation of Statutes Regulating Controlled Substances)**

9 14. Respondent is subject to discipline pursuant to Code section 4301(j), on the grounds
10 of unprofessional conduct, in that on or about August 14, 2014, while a registered pharmacy
11 technician, Respondent violated statutes regulating controlled substances and dangerous drugs, as
12 follows:

13 a. **Business and Professions Code section 4060:** Respondent possessed a controlled
14 substance, Methamphetamine, without authorization or a valid prescription therefor, as more
15 particularly set forth above in paragraph 12, subdivision (a).

16 b. **Health and Safety Code section 11377(a):** Respondent possessed a controlled
17 substance, Methamphetamine, without authorization or a valid prescription therefor, as more
18 particularly set forth above in paragraph 12, subdivision (a).

19 d. **Health and Safety Code section 11364(a)(1):** Respondent possessed an opium pipe
20 or device used for ingesting or smoking controlled substances, as more particularly set forth
21 above in paragraph 12, subdivision (a).

22 **MATTERS IN AGGRAVATION**

23 15. On or about May 26, 2006, in the case of *People v. Bryanna Nicole Porter*, (Super.
24 Ct. Butte County, 2006, Case No. SCR55311), Respondent was convicted by the Court on her
25 plea of no contest of violating Penal Code section 594(a) (vandalism), a misdemeanor.

26 16. On or about June 17, 2008, in the case of *People v. Bryanna Nicole Porter*, (Super.
27 Ct. Plumas County, 2008, Case No. JCR08-3530501), Respondent was convicted by the Court of
28 on her plea of no contest of violating Health and Safety Code section 11357(b) (possession of

1 Marijuana), a misdemeanor.

2 17. On or about November 6, 2009, in the case of *People v. Bryanna Nicole Porter*,
3 (Super. Ct. Butte County, 2009, Case No. SCR74885), Respondent was convicted by the Court on
4 her plea of guilty of violating Penal Code section 484 (theft), a misdemeanor.

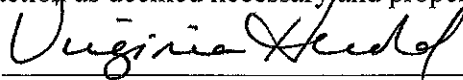
5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 119389,
9 issued to Bryanna Nicole Porter;
- 10 2. Ordering Bryanna Nicole Porter to pay the Board of Pharmacy the reasonable costs of
11 the investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3; and,
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: _____

9/14/16



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

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