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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:
GINA NICOLE BRITO
39440 Harvard Ln.
Palmdale, CA 93551

**Pharmacy Technician Registration No. TCH
115393**

Respondent.

Case No. 5544

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 27, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 5544 against Gina Nicole Brito (“Respondent”) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 2, 2011, the Board of Pharmacy (“Board”) issued Pharmacy Technician Registration No. TCH 115393 to Respondent. The Pharmacy Technician Registration expired on July 31, 2015, and has not been renewed.

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1 3. On or about January 29, 2016, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5544, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 39440 Harvard Ln., Palmdale, CA 93551.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.
18 5544.

19 7. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 8. Pursuant to its authority under Government Code section 11520, the Board title 1
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board offices regarding the allegations contained in Accusation No. 5544, finds that the
charges and allegations in Accusation No. 5544, are separately and severally, found to be true and
correct by clear and convincing evidence.

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1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$1,912.50 as of February 24, 2016.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Gina Nicole Brito has subjected
6 her Pharmacy Technician Registration No. TCH 115393 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 Registration based upon the following violations alleged in the Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case.

11 a. Respondent is subject to disciplinary action under Business and Professions Code
12 section 4301, subdivision (f) on the grounds of unprofessional conduct in that Respondent
13 committed acts involving moral turpitude, dishonesty, fraud or deceit.

14 b. Respondent is subject to disciplinary action under Business and Professions Code
15 section 4301, subdivision (h), in that on or about January 20, 2014, Respondent, by her own
16 admission, used methamphetamine, a controlled substance.

17 c. Respondent is subject to disciplinary action under Business and Professions Code
18 section 4301, subdivision (j), as defined in section 4060, in that on or about January 20, 2014,
19 and February 12, 2014, Respondent violated statutes regulating controlled substances.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 115393, heretofore issued to Respondent Gina Nicole Brito, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on June 6, 2016.

It is so ORDERED on May 6, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Amy Gutierrez, Pharm.D.
Board President

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DOJ Matter ID:LA2015502128
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Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(GINA NICOLE BRITO)

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2 ARMANDO ZAMBRANO
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 5544

12 **GINA NICOLE BRITO**
39440 Harvard Ln.
13 Palmdale, CA 93551

ACCUSATION

14 **Pharmacy Technician Registration No.**
TCH 115393

15 Respondent.
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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 September 2, 2011, the Board issued Pharmacy Technician Registration
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. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

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 seq.)] 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.

26

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

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 **COST RECOVERY**

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

1 towards the bedroom where the man entered. The officers informed Respondent that they need to
2 check on the child's welfare and to see the man in the bedroom. Respondent refused to cooperate
3 and stated the man was not in the apartment. After several minutes, Respondent allowed the
4 officer to search the apartment. After conducting a search, the officers learned that the man fled
5 through an open window. The officers observed that the bedrooms had large amounts of
6 clothing, trash, and other items piled up on the floors and in the baby's crib. They also found a
7 glass pipe with a white crystalline residue resembling methamphetamine, a miniature scale, and
8 numerous empty plastic "bindle baggies," commonly used to package controlled substances. The
9 officers further observed that Respondent appeared to be under the influence of a controlled
10 substance as she was unable to stand still, was extremely nervous, and her speech was rapid.
11 Respondent informed the officers that she probably have drugs in her and refused to submit to a
12 urine test. Respondent was arrested for violating Penal Code section 273A, subdivision (a) [child
13 endangerment]. Furthermore, a misdemeanor complaint was filed against Respondent for
14 violating Health and Safety Code section 11550, subdivision (a) [under the influence of a
15 controlled substance, to wit, methamphetamine], in a criminal proceeding entitled *The People of*
16 *the State of California v. Gina Nicole Brito* (Super. Ct. L.A. County, 2014, No. 4AV00440). The
17 Court ordered Respondent to enroll in an outpatient substance abuse program. On or about
18 August 27, 2014, after the proof of completion of the drug diversion program was filed, the Court
19 dismissed the case pursuant to Penal Code section 1385.

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

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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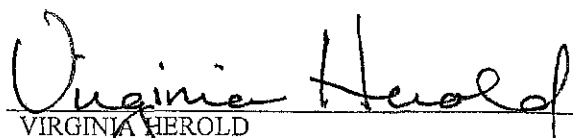
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PRAYER

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 115393, issued to Gina Nicole Brito;
2. Ordering Gina Nicole Brito 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: 1/21/16


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

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