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

In the Matter of the Accusation Against:  
**BRYANNA NICOLE PORTER**  
**1364 Oregon Creek Way**  
**Plumas Lake, CA 95971**  
**Pharmacy Technician Registration No.**  
**119389**  
  
Respondent.

Case No. 5632

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 14, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5632 against Bryanna Nicole Porter (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 29, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 119389 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5632 and will expire on October 31, 2015, unless renewed. This lapse in licensure, however, pursuant to Business and Professions Code sections 118(b) and 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1           3.     On or about September 21, 2016, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 5632, 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:

7 1364 Oregon Creek Way  
8 Plumas Lake, CA 95971.

9           4.     Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
11 124.

12           5.     On or about September 29, 2016, the aforementioned documents were returned by the  
13 U.S. Postal Service marked "Addressee Unknown." The address on the documents was the same  
14 as the address on file with the Board. Respondent failed to maintain an updated address with the  
15 Board and the Board has made attempts to serve the Respondent at the address on file.  
16 Respondent has not made herself available for service and therefore, has not availed herself of her  
17 right to file a notice of defense and appear at hearing.

18           6.     Government Code section 11506(c) states, in pertinent part:

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

24           7.     Respondent failed to file a Notice of Defense within 15 days after service upon her of  
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5632.

26           8.     California Government Code section 11520(a) states, in pertinent part:

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

1 9. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
5 file at the Board's offices regarding the allegations contained in Accusation No. 5632, finds that  
6 the charges and allegations in Accusation No. 5632, are separately and severally, found to be true  
7 and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and  
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
10 and Enforcement is \$1,400.00 as of October 27, 2016.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Bryanna Nicole Porter has  
13 subjected her Pharmacy Technician Registration No. 119389 to discipline.

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

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

18 a. Business and Professions Code section 4301(l) – Criminal Convictions

19 b. Business and Professions Code section 4301(f) – Moral Turpitude, Dishonesty,  
20 Deceit or Corruption

21 c. Business and Professions Code section 4301(j) – Violation of States Regulating  
22 Controlled Substances

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. 119389, heretofore issued to Respondent Bryanna Nicole Porter, 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 December 22, 2016.

It is so ORDERED on November 22, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

12480567.DOC  
DOJ Matter ID:SA2015105421

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

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(BRYANNA NICOLE PORTER)

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5333  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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. 5632

13 **BRYANNA NICOLE PORTER**  
1364 Oregon Creek Way  
14 Plumas Lake, CA 95971  
15 **Pharmacy Technician Registration No.**  
119389

**ACCUSATION**

16 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 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.

///



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**

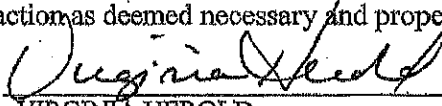
6 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
7 and that following the hearing, the Board of Pharmacy issue a decision:

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

  
15 VIRGINIA HEROLD  
16 Executive Officer  
17 Board of Pharmacy  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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