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

In the Matter of the Accusation Against:

CYNTHIA GUTIERREZ
7586 Layton St.
Rancho Cucamonga, CA 91730

Pharmacy Technician Registration
No. TCH 75100

Respondent.

Case No. 5677

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 30, 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. 5677 against Cynthia Gutierrez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 24, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 75100 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5677 expired on October 31, 2016, and has not unless renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not deprive the [Board] of its authority to institute or continue this disciplinary proceeding.

1 3. On or about August 16, 2016, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5677, 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: 7586 Layton St., Rancho Cucamonga, CA 91730.

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. On or about August 22, 2016, the U.S. Postal Service returned the green receipt for
11 certified mail, signed by Respondent on August 18, 2016, as receiving the aforementioned
12 documents at Respondent's address of record.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
20 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5677.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 5677, finds that

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1 the charges and allegations in Accusation No. 5677, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$2,700.00 as of November 1, 2016.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Cynthia Gutierrez has subjected
8 her Pharmacy Technician Registration No. TCH 75100 to discipline.

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

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

13 (a) Business and Professions Code section 4301, subdivision (f), in that Respondent
14 engaged in unprofessional conduct.

15 (b) Business and Professions Code section 4301, subdivision (f), in that Respondent
16 committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption.

17 (c) Business and Professions Code section 4301, subdivision (h), in that Respondent self-
18 administered a dangerous drug or controlled substance.

19 (d) Business and Professions Code section 4301, subdivision (l), 490, and California
20 Code of Regulations, title 16, section 1770, in that Respondent was convicted of an offense
21 substantially related to the qualifications, functions, and duties of a pharmacy technician.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 75100, heretofore issued to Respondent Cynthia Gutierrez, 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 on December 29, 2016.

It is so ORDERED on November 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

52281028.DOC
DOJ Matter ID:LA2015604072
Jz(11/1/16)

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(CYNTHIA GUTIERREZ)

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2 LINDA L. SUN
Supervising Deputy Attorney General
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Facsimile: (510) 622-2270
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 **CYNTHIA GUTIERREZ**
13 **7586 Layton St.**
Rancho Cucamonga, CA 91730
14 **Pharmacy Technician Registration No. TCH**
15 **75100**
16 Respondent.

Case No. 5677

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.
22 2. On or about April 24, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 75100 to Cynthia Gutierrez ("Respondent"). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought in this
25 Accusation and will expire on October 31, 2016, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board of Pharmacy (“Board”), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Business and Professions Code (“Code”) provides, in pertinent part:

6 “(a) Every license issued may be suspended or revoked.

7 “(b) The board shall discipline the holder of any license issued by the board, whose default has
8 been entered or whose case has been heard by the board and found guilty, by any of the following
9 methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

12 “(3) Suspending his or her right to practice for a period not exceeding one year.

13 “(4) Revoking his or her license.

14 “(5) Taking any other action in relation to disciplining him or her as the board in its discretion
15 may deem proper.”

16 5. Code section 4300.1 states:

17 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of
18 law or by order or decision of the board or a court of law, the placement of a license on a retired
19 status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to
20 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
21 licensee or to render a decision suspending or revoking the license.”

22 6. Code section 118, subdivision (b), provides that the
23 suspension/expiration/surrender/cancellation of a license shall not deprive the
24 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
25 within which the license may be renewed, restored, reissued or reinstated.

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1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.”

6 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a
7 license on the ground that the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, or duties of the business or profession for which the license was issued.

9 9. Section 493 of the Business and Professions Code States:

10 “Notwithstanding any other provision of law, in a proceeding conducted by a board within the
11 department pursuant to law to deny an application for a license or to suspend or revoke a license or
12 otherwise take disciplinary action against a person who holds a license, upon the ground that the
13 applicant or the licensee has been convicted of a crime substantially related to the qualifications,
14 functions, and duties of the licensee in question, the record of conviction of the crime shall be
15 conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may
16 inquire into the circumstances surrounding the commission of the crime in order to fix the degree of
17 discipline or to determine if the conviction is substantially related to the qualifications, functions, and
18 duties of the licensee in question.

19 “As used in this section, ‘License’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

20 10. California Code of Regulations, title 16, section 1770, states:

21 “For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered substantially related to the qualifications, functions or duties of a
24 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
25 licensee or registrant to perform the functions authorized by his license or registration in a manner
26 consistent with the public health, safety, or welfare.”

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1 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

2 11. Section 4022 of the Code states

3 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
4 humans or animals, and includes the following:

5 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
6 prescription,’ ‘Rx only,’ or words of similar import.

7 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale by
8 or on the order of a _____,’ ‘Rx only,’ or words of similar import, the blank to be filled in
9 with the designation of the practitioner licensed to use or order use of the device.

10 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
11 prescription or furnished pursuant to Section 4006.”

12 12. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety
13 Code section 11055, subdivision (d), and a dangerous drug pursuant to Code section 4022. It is a
14 stimulant drug.

15 COST RECOVERY

16 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 FACTUAL BACKGROUND

21 14. On or about July 18, 2012, deputies from the San Bernardino Sheriff’s Department
22 pulled Respondent over after receiving reports of a possible domestic dispute. During the stop,
23 the officers noticed that Respondent smelled strongly of marijuana. Respondent admitted to the
24 deputies that she had consumed alcohol and smoked marijuana earlier that day. Respondent
25 submitted to a blood chemical test which came back positive for amphetamine and cannabinoids.
26 Respondent was arrested for driving under the influence.

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1 15. On or about April 5, 2013, the San Bernardino Sheriff's Department received a report
2 of a man and woman fighting in a red pick-up truck in Rancho Cucamonga, California. Officer 1
3 located the red pick-up truck and observed it shaking from side to side. Officer 1 also heard
4 screaming and yelling coming from inside the vehicle. Officer 1 approached the driver of the
5 vehicle, a man who was later identified as Respondent's boyfriend, MB. MB admitted that he and
6 the woman, later identified as Respondent, were having an argument. Officer 1 began questioning
7 MB while Officer 2 and Officer 3 arrived on the scene and questioned Respondent.

8 16. While Officer 2 questioned Respondent, the officer noticed that she was extremely
9 nervous and fidgety. Respondent initially denied ever taking methamphetamines. When
10 questioned again by Officer 2, Respondent admitted she had taken methamphetamine with a friend
11 the previous day. Officer 2 administered a series of field sobriety tests to Respondent, which she
12 performed poorly. Officer 2 arrested Respondent for driving under the influence of a controlled
13 substance. Respondent provided a blood sample to law enforcement.

14 17. On or about September 9, 2015, in a criminal matter in the San Bernardino County
15 Superior Court entitled, "*People v. Cynthia Gutierrez*," Case No. MWV1303852, Respondent was
16 convicted by a plea of nolo contendere of fighting in public, an infraction. (Penal Code, § 415).
17 Respondent was ordered to pay \$485.00 by September 1, 2016.

18 18. Following a report that there were individuals illegally occupying or "squatting" in a
19 residence in Apple Valley, California, deputies from the San Bernardino County Sheriff's
20 Department went to the residence on March 21, 2015, to investigate. The deputies were met by
21 Respondent, and they discovered that she had two active misdemeanor warrants for her arrest.
22 The deputies determined that Respondent's boyfriend, MB, a wanted felon, was also living at the
23 residence with Respondent. Respondent was taken into custody for the active warrants. During
24 Respondent's arrest, the deputies warned her that MB was a wanted felon, and that if she was
25 found harboring MB, she would be arrested as an accessory.

26 19. On or about March 22, 2015, the San Bernardino County Sheriff's deputies returned
27 to the residence in Apple Valley in order to service a warrant for MB's arrest. One of the deputies
28 knocked on the front door of the residence. Respondent was inside the home and took several

1 minutes to respond to the knocking. When Respondent finally responded, she stated that she was
2 going to open the door, yet she still waited several minutes to do so. When she finally opened the
3 door, she blocked the doorway and denied that her boyfriend, MB, was there. The deputies had to
4 physically move Respondent out of the way in order to enter the home. Meanwhile, MB was
5 found attempting to flee through the rear entrance of the residence, where deputies were waiting.
6 MB was arrested and taken into custody. Respondent was arrested as an accessory for harboring
7 MB.

8 20. Deputies determined that the residence in Apple Valley was owned by a deceased
9 person and had been vacant for some time. When deputies entered the residence, they found the
10 home ransacked with the deceased owner's belongings all over the floor. There were multiple
11 animals running in and out, urinating and defecating all over the residence. After Respondent and
12 MB's arrest, one of the deputies contacted animal control, who took custody of three dogs and a
13 cat that were at the residence. They deputy also found a lock picking kit with several lock picking
14 keys inside the bedroom of the residence.

15 21. On or about March 22, 2015, deputies questioned Respondent following her arrest.
16 Respondent admitted that she had been living in the home in Apple Valley for several months. She
17 also admitted that she had taken over another vacant home and that she planned to move to that
18 home soon. Respondent never attempted to contact the lawful owners of either property, and she
19 erroneously believed that by signing and notarizing homestead documents, she had a legal right to
20 occupy these vacant homes.

21 **FIRST CAUSE FOR DISCIPLINE**
22 (General Unprofessional Conduct)
(Bus. & Prof. Code, §§ 4301)

23 22. Respondent has subjected her Pharmacy Technician's Registration to discipline
24 because she engaged in unprofessional conduct. (Bus. & Prof. Code, § 4301(f)). The
25 circumstances are set forth in paragraphs 14 through 21, above.

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SECOND CAUSE FOR DISCIPLINE

(Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)
(Bus. & Prof. Code, §§ 4301, subd. (f))

23. Respondent has subjected her Pharmacy Technician's Registration to discipline because she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, §§ 4301(f)). The circumstances are set forth in paragraphs 18 through 21, above.

THIRD CAUSE FOR DISCIPLINE

(Use of a Controlled Substance)
(Bus. & Prof. Code, §§ 4301, subd. (h))

24. Respondent has subjected her Pharmacy Technician's Registration to discipline in that she self-administered a dangerous drug or controlled substance. (Bus. & Prof. Code, §§ 4301(h)). The circumstances are set forth in paragraphs 14 through 16, above.

FOURTH CAUSE FOR DISCIPLINE

(Substantially Related Conviction)
(Bus. & Prof. Code, §§ 4301, subd. (l), 490; Cal. Code Regs., tit. 16, § 1770)

25. Respondent has subjected her Pharmacy Technician's Registration to discipline because she was convicted of an offense substantially related to the qualifications, functions, and duties of a pharmacy technician as defined by California Code Regulations, title 16, section 1770. (Bus. & Prof. Code, §§ 4301, subd. (l), 490). The circumstances are set forth in paragraph 17, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 75100, issued to Cynthia Gutierrez;
2. Ordering Cynthia Gutierrez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

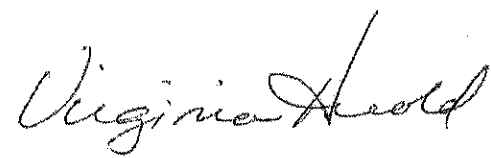
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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/30/16



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

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