

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

In the Matter of the Accusation Against:

**BRIANNA LINA HERNANDEZ  
5405 Siegfried Court  
Sacramento, CA 95823  
Pharmacy Technician Registration**

Case No. 5902

Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 7, 2017.

It is so ORDERED on March 8, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

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

11 In the Matter of the Statement of Issues  
Against:

12 **BRIANNA LINA HERNANDEZ**  
13 **5405 Siegfried Ct.**  
14 **Sacramento, CA 95823**

15 **Pharmacy Technician Registration**

16 Respondent.

Case No. 5902

OAH No. 2017010315

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
21 (Board). She brought this action solely in her official capacity and is represented in this matter by  
22 Xavier Becerra, Attorney General of the State of California, by Kristina T. Jarvis, Deputy  
23 Attorney General.

24 2. Respondent Brianna Lina Hernandez (Respondent) is represented in this proceeding  
25 by attorney Paul Chan, whose address is: Law Offices Of Paul Chan, 2311 Capitol Avenue,  
26 Sacramento, CA 95816.

27 3. On or about December 3, 2015, Respondent filed an application dated November 30,  
28 2015, with the Board to obtain Registration as a Pharmacy Technician.

1 **JURISDICTION**

2 4. Statement of Issues No. 5902 was filed before the Board, and is currently pending  
3 against Respondent. The Statement of Issues and all other statutorily required documents were  
4 properly served on Respondent on December 13, 2016.

5 5. A copy of Statement of Issues No. 5902 is attached as exhibit A and incorporated  
6 herein by reference.

7 **ADVISEMENT AND WAIVERS**

8 6. Respondent has carefully read, fully discussed with counsel, and understands the  
9 charges and allegations in Statement of Issues No. 5902. Respondent has also carefully read,  
10 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
11 Disciplinary Order.

12 7. Respondent is fully aware of her legal rights in this matter, including the right to a  
13 hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-  
14 examine the witnesses against her; the right to present evidence and to testify on her own behalf;  
15 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of  
16 documents; the right to reconsideration and court review of an adverse decision; and all other  
17 rights accorded by the California Administrative Procedure Act and other applicable laws.

18 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
19 every right set forth above.

20 **CULPABILITY**

21 9. Respondent admits the truth of each and every charge and allegation in Statement of  
22 Issues No. 5902.

23 10. Respondent agrees that her Pharmacy Technician Registration is subject to denial and  
24 she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
25 below.

26 **CONTINGENCY**

27 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
28 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may

1 communicate directly with the Board regarding this stipulation and settlement, without notice to  
2 or participation by Respondent or her counsel. By signing the stipulation, Respondent  
3 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation  
4 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation  
5 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
6 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
7 and the Board shall not be disqualified from further action by having considered this matter.

8 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
9 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
10 signatures thereto, shall have the same force and effect as the originals.

11 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
16 writing executed by an authorized representative of each of the parties.

17 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
18 the Board may, without further notice or formal proceeding, issue and enter the following  
19 Disciplinary Order:

### 20 DISCIPLINARY ORDER

21 IT IS HEREBY ORDERED that Respondent Brianna Lina Hernandez will be issued  
22 Registration as a Pharmacy Technician Registration, and such registration will be immediately  
23 revoked. The revocation will be stayed and the Respondent placed on five (5) years probation on  
24 the following terms and conditions.

#### 25 1. **Prescription Coordination and Monitoring of Prescription Use**

26 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
27 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
28 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's

1 history [with the use of alcohol, illicit drugs, controlled substances, and/or dangerous drugs,  
2 and/or of mental illness, and/or of gambling addiction] and who will coordinate and monitor any  
3 prescriptions for respondent for dangerous drugs and/or dangerous devices, controlled substances  
4 or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's  
5 [accusation, petition to revoke probation, or other pleading] and decision. A record of this  
6 notification must be provided to the board or its designee upon request. Respondent shall sign a  
7 release authorizing the practitioner to communicate with the board or its designee about  
8 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or  
9 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding  
10 respondent's compliance with this condition. If any substances considered addictive have been  
11 prescribed, the report shall identify a program for the time limited use of any such substances.  
12 The board or its designee may require that the single coordinating physician, nurse practitioner,  
13 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in  
14 addictive medicine. Should respondent, for any reason, cease supervision by the approved  
15 practitioner, respondent shall notify the board or its designee immediately and, within thirty (30)  
16 days of ceasing supervision, submit the name of a replacement physician, nurse practitioner,  
17 physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior  
18 approval. Failure to timely submit the selected practitioner or replacement practitioner to the  
19 board or its designee for approval, or to ensure the required quarterly reporting thereby, shall be  
20 considered a violation of probation.

21 If at any time an approved practitioner determines that respondent is unable to practice  
22 safely or independently as a [insert license type], the practitioner shall notify the board or its  
23 designee immediately by telephone and follow up by written letter within three (3) working days.  
24 Upon notification from the board or its designee of this determination, respondent shall be  
25 automatically suspended and shall not resume practice as a [insert license type] until notified by  
26 the board or its designee that practice may be resumed.

27 During any suspension, respondent shall not enter any pharmacy area or any portion of the  
28 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug

1 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or  
2 any area where dangerous drugs and/or dangerous devices or controlled substances are  
3 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,  
4 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall  
5 respondent manage, administer, or be a consultant to any licensee of the board, or have access to  
6 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or  
7 dangerous devices and controlled substances. Respondent shall not resume practice until notified  
8 by the board.

9 During any suspension, respondent shall not engage in any activity that requires the  
10 professional judgment and/or licensure as a [insert license type]. Respondent shall not direct or  
11 control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling,  
12 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

13 Failure to comply with any requirement or deadline stated by this term shall be considered a  
14 violation of probation.

15 **2. Obey All Laws**

16 Respondent shall obey all state and federal laws and regulations.

17 Respondent shall report any of the following occurrences to the board, in writing, within  
18 seventy-two (72) hours of such occurrence:

- 19  an arrest or issuance of a criminal complaint for violation of any provision of the  
20 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
21 substances laws
- 22  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
23 criminal complaint, information or indictment
- 24  a conviction of any crime
- 25  discipline, citation, or other administrative action filed by any state or federal agency  
26 which involves respondent's Pharmacy Technician Registration or which is related to  
27 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,  
28 billing, or charging for any drug, device or controlled substance.

1 Failure to timely report any such occurrence shall be considered a violation of probation.

2 **3. Report to the Board**

3 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
4 designee. The report shall be made either in person or in writing, as directed. Among other  
5 requirements, respondent shall state in each report under penalty of perjury whether there has  
6 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
7 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
8 in submission of reports as directed may be added to the total period of probation. Moreover, if  
9 the final probation report is not made as directed, probation shall be automatically extended until  
10 such time as the final report is made and accepted by the board.

11 **4. Interview with the Board**

12 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
13 with the board or its designee, at such intervals and locations as are determined by the board or its  
14 designee. Failure to appear for any scheduled interview without prior notification to board staff,  
15 or failure to appear at two (2) or more scheduled interviews with the board or its designee during  
16 the period of probation, shall be considered a violation of probation.

17 **5. Cooperate with Board Staff**

18 Respondent shall cooperate with the board's inspection program and with the board's  
19 monitoring and investigation of respondent's compliance with the terms and conditions of her  
20 probation. Failure to cooperate shall be considered a violation of probation.

21 **6. Notice to Employers**

22 During the period of probation, respondent shall notify all present and prospective  
23 employers of the decision in case number 5902 and the terms, conditions and restrictions imposed  
24 on respondent by the decision, as follows:

25 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
26 respondent undertaking any new employment, respondent shall cause her direct supervisor,  
27 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
28 tenure of employment) and owner to report to the board in writing acknowledging that the listed

1 individual(s) has/have read the decision in case number 5902 and the terms and conditions  
2 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or  
3 supervisor(s) submit timely acknowledgement(s) to the board.

4 If respondent works for or is employed by or through a pharmacy employment service,  
5 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy  
6 of the terms and conditions of the decision in case number 5902 in advance of the respondent  
7 commencing work at each pharmacy. A record of this notification must be provided to the board  
8 upon request.

9 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
10 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
11 service, respondent shall cause her direct supervisor with the pharmacy employment service to  
12 report to the board in writing acknowledging that she has read the decision in case number 5902  
13 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
14 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

15 Failure to timely notify present or prospective employer(s) or to cause that/those  
16 employer(s) to submit timely acknowledgements to the board shall be considered a violation of  
17 probation.

18 "Employment" within the meaning of this provision shall include any full-time,  
19 part-time, temporary or relief service or pharmacy management service as a pharmacy  
20 technician or in any position for which a pharmacy technician license is a requirement  
21 or criterion for employment, whether the respondent is considered an employee,  
22 independent contractor or volunteer.

23 **7. Probation Monitoring Costs**

24 Respondent shall pay any costs associated with probation monitoring as determined by the  
25 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
26 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
27 be considered a violation of probation.

28 ///



1           **8. Status of License**

2           Respondent shall, at all times while on probation, maintain an active, current pharmacy  
3 technician license with the board, including any period during which suspension or probation is  
4 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

5           If respondent's pharmacy technician license expires or is cancelled by operation of law or  
6 otherwise at any time during the period of probation, including any extensions thereof due to  
7 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all  
8 terms and conditions of this probation not previously satisfied.

9           **9. License Surrender While on Probation/Suspension**

10          Following the effective date of this decision, should respondent cease work due to  
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
12 respondent may tender her pharmacy technician license to the board for surrender. The board or  
13 its designee shall have the discretion whether to grant the request for surrender or take any other  
14 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
15 license, respondent will no longer be subject to the terms and conditions of probation. This  
16 surrender constitutes a record of discipline and shall become a part of the respondent's license  
17 history with the board.

18          Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician  
19 license to the board within ten (10) days of notification by the board that the surrender is  
20 accepted. Respondent may not reapply for any license, permit, or registration from the board for  
21 three (3) years from the effective date of the surrender. Respondent shall meet all requirements  
22 applicable to the license sought as of the date the application for that license is submitted to the  
23 board.

24          **10. Notification of a Change in Name, Residence Address, Mailing Address or**  
25 **Employment**

26          Respondent shall notify the board in writing within ten (10) days of any change of  
27 employment. Said notification shall include the reasons for leaving, the address of the new  
28 employer, the name of the supervisor and owner, and the work schedule if known. Respondent

1 shall further notify the board in writing within ten (10) days of a change in name, residence  
2 address and mailing address, or phone number.

3 Failure to timely notify the board of any change in employer(s), name(s), address(es), or  
4 phone number(s) shall be considered a violation of probation.

#### 5 11. Tolling of Probation

6 Except during periods of suspension, respondent shall, at all times while on probation, be  
7 employed as a pharmacy technician in California for a minimum of 40 hours per calendar month.  
8 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
9 period of probation shall be extended by one month for each month during which this minimum is  
10 not met. During any such period of tolling of probation, respondent must nonetheless comply  
11 with all terms and conditions of probation.

12 Should respondent, regardless of residency, for any reason (including vacation) cease  
13 working as a pharmacy technician for a minimum of 40 hours per calendar month in California,  
14 respondent must notify the board in writing within ten (10) days of cessation of work and must  
15 further notify the board in writing within ten (10) days of the resumption of the work. Any failure  
16 to provide such notification(s) shall be considered a violation of probation.

17 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
18 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
19 exceeding thirty-six (36) months.

20 "Cessation of work" means calendar month during which respondent is not  
21 working for at least 40 hours as a pharmacy technician, as defined in Business and  
22 Professions Code section 4115. "Resumption of work" means any calendar month  
23 during which respondent is working as a pharmacy technician for at least 40 hours as  
24 a pharmacy technician as defined by Business and Professions Code section 4115.

#### 25 12. Violation of Probation

26 If a respondent has not complied with any term or condition of probation, the board shall  
27 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
28 all terms and conditions have been satisfied or the board has taken other action as deemed

1 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
2 to impose the penalty that was stayed.

3 If respondent violates probation in any respect, the board, after giving respondent notice  
4 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
5 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
6 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
7 a petition to revoke probation or an accusation is filed against respondent during probation, the  
8 board shall have continuing jurisdiction, and the period of probation shall be automatically  
9 extended until the petition to revoke probation or accusation is heard and decided.

10 **13. Completion of Probation**

11 Upon written notice by the board indicating successful completion of probation,  
12 respondent's pharmacy technician license will be fully restored.

13 **14. No Ownership of Licensed Premises**

14 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
15 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
16 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
17 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
18 days following the effective date of this decision and shall immediately thereafter provide written  
19 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
20 documentation thereof shall be considered a violation of probation.

21 **15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

22 Within thirty (30) days of the effective date of this decision, respondent shall begin regular  
23 attendance at a recognized and established substance abuse recovery support group in California,  
24 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board  
25 or its designee. Respondent must attend at least one group meeting per week unless otherwise  
26 directed by the board or its designee. Respondent shall continue regular attendance and submit  
27 signed and dated documentation confirming attendance with each quarterly report for the duration  
28 of probation. Failure to attend or submit documentation thereof shall be considered a violation of

1 probation.

2 **16. Random Drug Screening**

3 Respondent, at her own expense, shall participate in random testing, including but not  
4 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
5 screening program as directed by the board or its designee. Respondent may be required to  
6 participate in testing for the entire probation period and the frequency of testing will be  
7 determined by the board or its designee. At all times respondent shall fully cooperate with the  
8 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
9 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
10 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
11 of probation. Upon request of the board or its designee, respondent shall provide documentation  
12 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
13 a necessary part of the treatment of the respondent. Failure to timely provide such documentation  
14 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
15 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
16 shall be considered a violation of probation and shall result in the automatic suspension of work  
17 by respondent. Respondent may not resume work as a pharmacy technician until notified by the  
18 board in writing.

19 During suspension, respondent shall not enter any pharmacy area or any portion of or any  
20 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other  
21 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and  
22 devices or controlled substances are maintained. Respondent shall not do any act involving drug  
23 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent  
24 manage, administer, or assist any licensee of the board. Respondent shall not have access to or  
25 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled  
26 substances. Respondent shall not resume work until notified by the board.

27 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.  
28 Subject to the above restrictions, respondent may continue to own or hold an interest in any

1 licensed premises in which she holds an interest at the time this decision becomes effective unless  
2 otherwise specified in this order.

3 Failure to comply with this suspension shall be considered a violation of probation.

4 **17. Work Site Monitor**

5 Within ten (10) days of the effective date of this decision, respondent shall identify a work  
6 site monitor, for prior approval by the board, who shall be responsible for supervising respondent  
7 during working hours. Respondent shall be responsible for ensuring that the work site monitor  
8 reports in writing to the board quarterly. Should the designated work site monitor determine at  
9 any time during the probationary period that respondent has not maintained sobriety, she shall  
10 notify the board immediately, either orally or in writing as directed. Should respondent change  
11 employment, a new work site monitor must be designated, for prior approval by the board, within  
12 ten (10) days of commencing new employment. Failure to identify an acceptable initial or  
13 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be  
14 considered a violation of probation.

15 **18. Notification of Departure**

16 Prior to leaving the probationary geographic area designated by the board or its designee for  
17 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in  
18 writing of the dates of departure and return. Failure to comply with this provision shall be  
19 considered a violation of probation.

20 **19. Abstain from Drugs and Alcohol Use**

21 Respondent shall completely abstain from the possession or use of alcohol, controlled  
22 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
23 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
24 request of the board or its designee, respondent shall provide documentation from the licensed  
25 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
26 treatment of the respondent. Failure to timely provide such documentation shall be considered a  
27 violation of probation. Respondent shall ensure that she is not in the same physical location as  
28 individuals who are using illicit substances even if respondent is not personally ingesting the

1 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
2 not supported by the documentation timely provided, and/or any physical proximity to persons  
3 using illicit substances, shall be considered a violation of probation.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
6 discussed it with my attorney, Paul Chan. I understand the stipulation and the effect it will have  
7 on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary  
8 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
9 of the Board of Pharmacy.

10 DATED: 02/10/17

11   
12 BRIANNA LINA HERNANDEZ  
13 Respondent

14 APPROVAL AS TO FORM AND CONTENT

15 I have read and fully discussed with Respondent Brianna Lina Hernandez the terms and  
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
17 I approve its form and content.

18 DATED: 2/10/17

19   
20 PAUL CHAN  
21 Attorney for Respondent


22 ENDORSEMENT

23 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
24 submitted for consideration by the Board of Pharmacy.

25 Dated: February 10, 2017

26 Respectfully submitted,

27 XAVIER BECERRA  
28 Attorney General of California  
JANICE K. LACHMAN  
Supervising Deputy Attorney General

  
KRISTINA T. JARVIS  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Statement of Issues No. 5902**

1 KAMALA D. HARRIS  
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2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KRISTINA T. JARVIS  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
**BOARD OF PHARMACY**  
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5902

12 **BRIANNA LINA HERNANDEZ**

13 **Pharmacy Technician Registration Applicant**

**STATEMENT OF ISSUES**

14 Respondent.

15  
16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity as the  
19 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

20 2. On or about December 3, 2015, the Board received an application for a pharmacy  
21 technician registration from Brianna Lina Hernandez ("Respondent"). On or about November 30,  
22 2015, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,  
23 and representations in the application. The Board denied the application on May 27, 2016.

24 **JURISDICTION**

25 3. Pursuant to Business and Professions Code ("Code") section 485(b), on or about May  
26 27, 2016, Respondent's application was denied and she was notified of the right to a hearing to  
27 appeal the denial.

28 ///



1 4. On or about June 29, 2016, the Board received Respondent's request for a hearing to  
2 appeal the denial of her application.

3 **STATUTORY PROVISIONS**

4 5. Business and Professions Code ("Code") section 4300 states, in pertinent part:

5 (c) The board may refuse a license to any applicant guilty of unprofessional  
6 conduct.

7 6. Code section 4301 states, in pertinent part:

8 The board shall take action against any holder of a license who is guilty of  
9 unprofessional conduct or whose license has been procured by fraud or  
10 misrepresentation or issued by mistake.

11 Unprofessional conduct shall include, but is not limited to, any of the  
12 following:

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

18 (I) The conviction of a crime substantially related to the qualifications,  
19 functions, and duties of a licensee under this chapter. The record of conviction of a  
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
21 States Code regulating controlled substances or of a violation of the statutes of this  
22 state regulating controlled substances or dangerous drugs shall be conclusive  
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
24 be conclusive evidence only of the fact that the conviction occurred. The board may  
25 inquire into the circumstances surrounding the commission of the crime, in order to  
26 fix the degree of discipline or, in the case of a conviction not involving controlled  
27 substances or dangerous drugs, to determine if the conviction is of an offense  
28 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.

24 ///

25 ///

26 ///

27 ///

28 ///

1 7. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that the  
3 applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this section  
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
6 Any action that a board is permitted to take following the establishment of a  
7 conviction may be taken when the time for appeal has elapsed, or the judgment of  
8 conviction has been affirmed on appeal, or when an order granting probation is made  
9 suspending the imposition of sentence, irrespective of a subsequent order under the  
10 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(3)(A) Done any act that if done by a licentiate of the business or profession in  
question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime  
or act is substantially related to the qualifications, functions, or duties of the business  
or profession for which application is made.

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Conviction of a Crime)**

13 8. Respondent's application is subject to denial under Code section 480(a)(1), in that on  
14 or about May 21, 2015, in the case of *People v. Brianna Lina Hernandez* (Super. Ct. Sacramento  
15 County, 2015, Case No. 15M01910), Respondent was convicted by the Court on her plea of nolo  
16 contendere of violating Vehicle Code section 23152(b) (driving a vehicle with a blood alcohol  
17 level of .08% or higher), a misdemeanor, with an enhancement of Vehicle Code section 23578  
18 (driving a vehicle with a blood alcohol level of .15% or higher). The circumstances of the crime  
19 were that on or about January 10, 2015, Respondent drove a vehicle while having a blood alcohol  
20 level of 0.21% and collided with another vehicle. The crime is substantially related to the  
21 qualifications, functions or duties of a pharmacy technician.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Committed Acts Which If Done By A Licentiate)**

24 9. Respondent's application is subject to denial under Code section 480(a)(3)(A), in that  
25 she committed acts which if done by a licentiate of the profession would constitute grounds for  
26 discipline under Code section 4301(l) (conviction of a crime). The conduct described above in  
27 paragraph 8, would also constitute grounds for discipline under Code sections 4301(h) (used  
28 alcohol to an extent or in a manner dangerous or injurious to herself and the public).

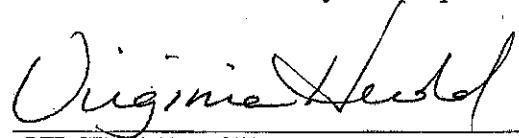
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PRAYER

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

1. Denying the application of Brianna Lina Hernandez for a Pharmacy Technician Registration; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/5/16



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

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