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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. 3723

12 **NINA RENEE ESCOTO**
13 **420 Hampshire Street**
14 **Vallejo, CA 94590**
15 **Pharmacy Technician License No. TCH**
16 **47598**

A C C U S A T I O N

Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about February 19, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 47598 to Nina Renee Escoto (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought in this Accusation
24 and will expire on September 30, 2012, unless renewed.

25 JURISDICTION

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

1 4. Section 4300 of the Code states:

2 "(a) Every license issued may be suspended or revoked.

3 5. Section 118, subdivision (b), of the Code provides that the suspension/expiration
4 /surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
5 disciplinary action during the period within which the license may be renewed, restored, reissued
6 or reinstated. Section 4402, subdivision (a), of the Code provides that any pharmacist license that
7 is not reviewed within three years following its expiration may not be renewed, restored, or
8 reinstated and shall be canceled by operation of law at the end of the three-year period. Section
9 4402, subdivision (e) of the Code provides that any other license issued by the Board may be
10 canceled by the Board if not renewed within 60 days after its expiration, and any license canceled
11 in this fashion may not be reissued but will instead require a new application to seek reissuance.

12 STATUTORY AND REGULATORY PROVISIONS

13 6. Section 4301 of the Code states:

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

17 ...

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

23 ...

24 "(k) The conviction of more than one misdemeanor or any felony involving the use,
25 consumption, or self administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

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

20 8. 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 her license or registration in a
26 manner consistent with the public health, safety, or welfare.”

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28 ///

1 COST RECOVERY

2 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee 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 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct/Use of Alcohol in a Dangerous Manner)
8 (Bus. & Prof. Code § 4301(h))

9 10. Respondent has subjected her license to disciplinary action under section 4301,
10 subdivision (h) in that she used alcoholic beverages to the extent or in a manner as to be
11 dangerous or injurious to herself and others. The circumstances are as follows:

12 11. On or about April 25, 2009, Respondent was arrested for driving under the influence
13 of alcohol with a blood alcohol content (BAC) of over .08 percent. A Benicia Police Department
14 police officer responded to the scene of a traffic accident where the officer identified Respondent
15 as the driver of one of the vehicles involved in the collision. The officer smelled the odor of an
16 alcoholic beverage emitting from Respondent's breath. Respondent admitted to consuming three
17 to four beers that evening. Respondent failed to perform the field sobriety tests (FSTs) as
18 demonstrated. The officer administered a Preliminary Alcohol Screening the result of which
19 showed a BAC of .17 percent. Based on the results of the FSTs and the objective signs and
20 symptoms of intoxication, the police officer arrested Respondent for violating Vehicle Code
21 section 23152, subdivision (a) (DUI of a Drug or Alcohol) and section 23152, subdivision (b)
22 (DUI with BAC over 0.08 percent).

23 SECOND CAUSE FOR DISCIPLINE

24 (Conviction)
25 (Bus. & Prof. Code §§ 490, 4301(l); CCR, tit. 16, §1770)

26 12. Respondent has subjected her license to disciplinary action under sections 490 and
27 4301, subdivision (l), by reference to California Code of Regulations, title 16, section 1770, for
28 the conviction of a substantially related crime, in that on or about July 22, 2009, in *People v. Nina
Renee Escoto*, Case No. VCR203556 in Solano County Superior Court, Respondent was

1 convicted by plea of nolo contendere of one count of violating Vehicle Code section 23152,
2 subdivision (b) (DUI with BAC over 0.08 percent), a misdemeanor. Imposition of sentence was
3 suspended in favor of a three year summary probation, with terms and conditions including four
4 days in jail, completing a first offender program, and fines and fees.

5 THIRD CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct/Use of Alcohol in a Dangerous Manner)
7 (Bus. & Prof. Code § 4301(h))

8 13. Respondent has subjected her license to disciplinary action under section 4301,
9 subdivision (h) in that she used alcoholic beverages to the extent or in a manner as to be
10 dangerous or injurious to herself and others. The circumstances are as follows:

11 14. On or about October 24, 2009, Respondent was arrested for driving under the
12 influence of alcohol with a BAC of over .08 percent and for violating probation. A Benicia
13 Police Department police officer initiated an enforcement traffic stop on Respondent's vehicle
14 which had failed to come to a complete stop at a stop sign. The police officer smelled the odor of
15 an alcoholic beverage on Respondent's breath. Respondent admitted to consuming a few
16 alcoholic beverages earlier that evening. Respondent failed to perform the FSTs as demonstrated.
17 The officer administered a Preliminary Alcohol Screening test but Respondent failed to complete
18 the test as instructed. Based on the results of the FSTs and the objective signs and symptoms of
19 intoxication, the officer arrested Respondent for violating Vehicle Code section 23152,
20 subdivision (a) (DUI of a Drug or Alcohol) and section 23152, subdivision (b) (DUI with BAC
21 over 0.08 percent). Respondent was then transferred to County Jail for booking, at which time
22 she submitted to a blood test, the results of which later revealed that her BAC was .19 percent.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Conviction)
25 (Bus. & Prof. Code §§ 490, 4301(1); CCR, tit. 16, §1770)

26 15. Respondent has subjected her license to disciplinary action under sections 490 and
27 4301, subdivision (1), by reference to California Code of Regulations, title 16, section 1770, for
28 the conviction of a substantially related crime, in that on or about December 4, 2009, in *People v.*
Nina Renee Escoto, Case No. VCR205295 in Solano County Superior Court, Respondent was
convicted by plea of nolo contendere of one count of violating Vehicle Code section 23152,

1 subdivision (a) (DUI of Alcohol or Drugs), a misdemeanor. Imposition of sentence was
2 suspended in favor of a three year summary probation, with terms and conditions including 20
3 days in jail, and fines and fees.

4 FIFTH CAUSE FOR DISCIPLINE
5 (Conviction of Misdemeanors Involving Alcohol)
6 (Bus. & Prof. Code § 4301(k))

7 16. Complainant realleges the allegations contained in paragraphs 12 and 15 above, and
8 incorporates them by reference as if fully set forth.

9 17. Respondent has subjected her license to disciplinary action under section 4301,
10 subdivision (k) in that she was convicted of two misdemeanors involving the consumption of
11 alcoholic beverages.

12 PRAYER

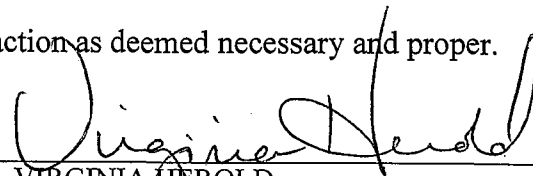
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

15 1. Revoking or suspending Pharmacy Technician License Number TCH 47598, issued
16 to Nina Renee Escoto;

17 2. Ordering Nina Renee Escoto to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;

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

21 DATED: 12/02/10



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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