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

11 In the Matter of the Accusation Against:

Case No. 4636

12 **IRENE KIRSCHENMAN**  
13 10125 Saint Albans Ave.  
14 Bakersfield, CA 93311

**ACCUSATION**

15 **Pharmacist Technician Registration No.**  
**TCH 30147**

16 Respondent.

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18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On July 30, 1999, the Board of Pharmacy issued Pharmacist Technician Registration  
24 Number TCH 30147 to IRENE KIRSCHENMAN (Respondent). The Pharmacist Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on January 31, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws.

4 **STATUTORY PROVISIONS**

5 4. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides that the  
6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of  
7 jurisdiction to proceed with a disciplinary action during the period within which the license may  
8 be renewed, restored, reissued, or reinstated.

9 5. Section 490 states, in pertinent part:

10 (a) In addition to any other action that a board is permitted to take against  
11 a licensee, a board may suspend or revoke a license on the ground that the licensee  
12 has been convicted of a crime, if the crime is substantially related to the  
13 qualifications, functions, or duties of the business or profession for which the license  
14 was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise any  
16 authority to discipline a licensee for conviction of a crime that is independent of the  
17 authority granted under subdivision (a) only if the crime is substantially related to the  
18 qualifications, functions, or duties of the business or profession for which the  
19 licensee's license was issued.

20 (c) A conviction within the meaning of this section means a plea or  
21 verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
22 board is permitted to take following the establishment of a conviction may be taken  
23 when the time for appeal has elapsed, or the judgment of conviction has been affirmed  
24 on appeal, or when an order granting probation is made suspending the imposition of  
25 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
26 the Penal Code.

27 6. Section 4300 permits the Board to take disciplinary action by suspending or revoking  
28 any license issued by the Board.

7. Section 4300.1 states:

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

<sup>1</sup> All further statutory references are to the Business and Professions Code unless  
otherwise indicated.

1 8. Section 4301 states, in pertinent part:

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

6 ...

7 (f) The commission of any act involving moral turpitude, dishonesty,  
8 fraud, deceit, or corruption, whether the act is committed in the course of relations as  
9 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10 (g) Knowingly making or signing any certificate or other document that  
11 falsely represents the existence or nonexistence of a state of facts.

12 ...

13 (j) The violation of any of the statutes of this state, or any other state, or  
14 of the United States regulating controlled substances and dangerous drugs.

15 ...

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

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in  
or abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency.

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1 9. Section 493 states:

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

12 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'  
13 and 'registration.'

14 **STATUTORY PROVISION**

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

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

23 **COST RECOVERY**

24 11. Section 125.3 provides that the Board may request the administrative law judge to  
25 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
26 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

27 **CONTROLLED SUBSTANCE**

28 12. Methamphetamine is a Schedule II controlled substance as designated by Section  
4021 and Health and Safety Code section 11055, subdivision (d)(2).

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under Section 490 and Section 4301,  
4 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that  
5 Respondent was convicted of a crime substantially related to the qualifications, functions, or  
6 duties of a pharmacy technician, as follows:

7 14. On November 21, 2012, in a criminal proceeding entitled *People v. Aaron*  
8 *Kirschenman and Irene Valero*<sup>2</sup> (Super. Ct. Kern County, 2012, No. BF139693), Respondent was  
9 convicted of one misdemeanor count of Penal Code section 460, subdivision (b) [second degree  
10 burglary]. On January 15, 2013, the Court placed Respondent on three years probation with  
11 standard terms and conditions of probation. The Court also ordered Respondent to serve 60 days  
12 in custody with one day credit for time served, stayed until February 14, 2013, and referred  
13 Respondent to the work release program. The factual circumstances of the offense are as follows:

14 a. On or about April 17, 2011, an officer from the Bakersfield Police Department  
15 was dispatched to an RV park and contacted two victims. The victims reported that their fifth  
16 wheel RV had been broken into and that they confronted the two suspects who fled in a truck.

17 The officer entered the fifth wheel and noted that the victims' 26-inch Visio television had been  
18 stolen. The officer processed the fifth wheel for latent fingerprint evidence. On or about October  
19 20, 2011, while reviewing the case, the officer saw that a possible suspect had been identified  
20 through fingerprints as Aaron Kirschenman. On or about October 21, 2011, the officer went to  
21 Aaron Kirschenman's residence and observed a truck matching the suspect vehicle description.  
22 The officer ran a records check of the vehicle, which revealed that Respondent was the registered  
23 owner. Each of the victims of the crime identified Respondent as one of the two individuals  
24 involved in the burglary in a photographic line-up. Later that afternoon, the officer made contact  
25 with Respondent outside of her residence, at which time Respondent identified Aaron  
26 Kirschenman as her husband. Respondent admitted to being present in the truck at the time of the

27 <sup>2</sup> Irene Valero was charged in the criminal complaint with an aka of Irene Kirschenman  
28 and she is the Respondent in this administrative matter.

1 burglary of the fifth wheel. Respondent claimed that she was just a passenger and did not know  
2 what was going on. She stated that her husband was present during the offense, but that she did  
3 not realize that he was breaking into the trailer. Respondent denied knowledge of the stolen  
4 television.

5 15. On November 30, 2012, in a criminal proceeding entitled *People v. Shana Adams,*  
6 *Aaron Kirschenman, Irene Kirschenman, and Travis Norm Swanson* (Super. Ct. Kern County,  
7 2012, No. BF142568), Respondent pled nolo contendere to one misdemeanor count of Penal  
8 Code section 148.5, subdivision (a) [filing a false report]. Respondent had also being charged  
9 with Health and Safety Code section 11377, subdivision (a) [possession of a controlled  
10 substance], and Penal Code section 496, subdivision (a) [receiving stolen property], but these  
11 additional charges were dismissed in light of the plea. The Court placed Respondent on three  
12 years probation with standard terms and conditions. The factual circumstances of the offense are  
13 as follows:

14 a. On or about April 30, 2012, deputies from the Kern County Sheriff's  
15 Department responded to an alarm at the Kern Mosquito Abatement District (Mosquito  
16 Abatement). The deputies made contact with the party responsible for the Mosquito Abatement  
17 site (Responsible Party). The Responsible Party told the deputies that he located a motorcycle on  
18 the west fence line, that there was a cut in the fence line next to the motorcycle, and that the  
19 believed the suspects entered the Mosquito Abatement through the cut fence. One of the deputies  
20 conducted a records check of the motorcycle, which revealed that the motorcycle was registered to  
21 Aaron Kirschenman. Later, while the deputy was having the motorcycle towed and stored, he  
22 found that the motorcycle was now reported as stolen. Upon contacting the Bakersfield Police  
23 Department, the deputy was advised that Aaron Kirschenman had called to report his motorcycle,  
24 helmet, and other items as stolen. On or about May 4, 2012, Respondent went to the Kern County  
25 Sheriff's Office Headquarters to get the motorcycle, which was reported stolen on May 1, 2012,  
26 released. Deputies from the Kern County Sheriff's Department interviewed Respondent  
27 regarding the report of the stolen motorcycle. During the interview, Respondent stated that she  
28 called to report the motorcycle as stolen when her husband Aaron Kirschenman asked her to, and

1 Respondent changed her story regarding the events leading up to her report of the stolen vehicle.  
2 It was determined through a Sheriff's Department investigation, that Respondent had falsely  
3 reported the motorcycle stolen.

4 b. On or about June 13, 2012, the Kern County Sheriff's Department obtained a  
5 search warrant at the Kirschenman residence as part of the investigation into the burglary of the  
6 Mosquito Abatement. Just prior to the execution of the warrant, Aaron Kirschenman drove away  
7 from the residence in his Ford Bronco. Sheriff's deputies detained Aaron Kirschenman and  
8 observed that he displayed signs and symptoms of using a controlled substance. Also, the  
9 deputies located a broken methamphetamine pipe and a clear plastic baggie containing  
10 methamphetamine under the driver side of the vehicle, as well as evidence on his cellular phone  
11 that indicated that he was involved in sales and trafficking of narcotics. On or about June 14,  
12 2012, the Sheriff's Department executed the search warrant of the Kirschenman residence while  
13 Respondent was present at the residence. The Sheriff's deputies discovered evidence of the sales  
14 of narcotics throughout the residence. In the master suite, which was shared by Respondent and  
15 Aaron Kirschenman, the deputies found three vials of prescription pills that were not prescribed to  
16 either Respondent or her husband. The deputies also located \$2,286 in Respondent's white lab  
17 coat. Additionally, the deputies located a large quantity of suspected stolen property and tools  
18 used to commit thefts or burglaries in the garage.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

21 16. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in  
22 that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or  
23 corruption. Complainant refers to, and by this reference incorporates, the allegations set forth  
24 above in paragraphs 14 through 15(b), inclusive, as though set forth fully herein.

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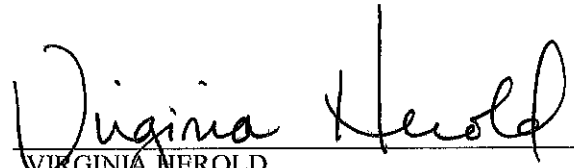
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**PRAYER**

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

1. Revoking or suspending Pharmacist Technician Registration Number TCH 30147, issued to IRENE KIRSCHENMAN;
2. Ordering IRENE KIRSCHENMAN 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/15/14



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

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