

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-0962  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4853

11 **NICHOLAS JOSHUA FRANCO**  
12 17350 Temple Ave. #26  
La Puente, CA 91744  
13 and  
14 Nicholas Joshua Franco CDCR # AN9026  
Tehachapi Prison  
24900 California 202  
15 Tehachapi, CA 93561

**ACCUSATION**

16 Pharmacy Technician Registration No. TCH 122550

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about April 26, 2012, the Board issued Pharmacy Technician Registration No.  
25 TCH 122550 to Nicholas Joshua Franco (Respondent). The Pharmacy Technician Registration  
26 was in full force and effect at all times relevant to the charges brought herein and will expire on  
27 April 30, 2014, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following  
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4300.1 states:

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

10 **STATUTORY PROVISIONS**

11 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or  
12 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
13 action during the period within which the license may be renewed, restored, reissued or reinstated.

14 6. Section 490 states, in pertinent part:

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

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

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

1           7.    Section 4300, subdivision (a), states that “[e]very license issued may be suspended or  
2    revoked.”

3           8.    Section 4301 states, in pertinent part:

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

7           . . . .

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

13          . . . .

14          "(l)  The conviction of a crime substantially related to the qualifications, functions, and  
15   duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
16   (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
17   substances or of a violation of the statutes of this state regulating controlled substances or  
18   dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
19   record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
20   The board may inquire into the circumstances surrounding the commission of the crime, in order  
21   to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
22   dangerous drugs, to determine if the conviction is of an offense substantially related to the  
23   qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
24   a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
25   of this provision. The board may take action when the time for appeal has elapsed, or the  
26   judgment of conviction has been affirmed on appeal or when an order granting probation is made  
27   suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
28   the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
2 indictment. . . ."

3 **REGULATORY PROVISION**

4 9. California Code of Regulations, title 16, section 1770, states:

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

11 **COST RECOVERY**

12 10. Section 125.3 provides that the Board may request the administrative law judge to  
13 direct a licensee found to have committed a violation or violations of the licensing act to pay a  
14 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

15 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

16 11. Methamphetamine is a Schedule II controlled substance as designated by Health and  
17 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
18 section 4022

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Convictions of Substantially Related Crimes)**

21 12. Respondent is subject to disciplinary action under sections 490 and 4301,  
22 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that  
23 Respondent was convicted of crimes substantially related to the qualifications, functions or duties  
24 of a licensee or registrant which to a substantial degree evidence his present or potential unfitness  
25 to perform the functions authorized by his license or registration in a manner consistent with the  
26 public health, safety, or welfare, as follows:

27 a. On or about July 17, 2012, after pleading nolo contendere, Respondent was convicted  
28 of two (2) misdemeanor counts, Count 2, violating Vehicle Code section 23152(b) [drive with an

1 equal to or greater than 0.08% blood alcohol content (BAC)], and Count 3, violating Vehicle  
2 Code section 25400(a)(1) [having a concealed firearm in vehicle] in the criminal proceeding  
3 entitled *The People of the State of California v. Nicholas Joshua Franco* (Super. Ct. Los Angeles  
4 County, 2012, No. 2JB05709). The Court sentenced Respondent to 85 days in jail, placed him on  
5 three (3) years probation, and ordered him to complete a Three-Month First Offender Alcohol  
6 Program.

7 b. The circumstances underlying the conviction are that on or about July 15, 2012,  
8 Respondent drove a vehicle while under tested blood alcohol contents of 0.114/0.176/0.129. In  
9 addition, Respondent was in possession of a Smith & Wesson, 38 Special, loaded with five (5)  
10 rounds of ammunition, a polished metal dagger, and a counterfeit 100 dollar bill.

11 c. On or about November 27, 2012, after pleading nolo contendere, Respondent was  
12 convicted of one felony count of violating Penal Code section 25400(a)(2) [having a concealed  
13 firearm on his person] in the criminal proceeding entitled *The People of the State of California v.*  
14 *Nicholas Joshua Franco* (Super. Ct. Los Angeles County, 2012, No. KA099761). The Court  
15 sentenced Respondent to three (3) years in state prison. The sentence was suspended and  
16 Respondent was placed on three (3) years probation and ordered to serve 180 days in jail.

17 d. The circumstances underlying the conviction are that on or about October 16, 2012,  
18 Respondent was found sleeping in a seated position on a residential street curb, while in  
19 possession of a Smith & Wesson .357 revolver loaded with six (6) rounds of ammunition and  
20 scratched-off serial numbers, and a methamphetamine glass smoking pipe. Respondent admitted  
21 to officers that he was too drunk to remember anything that happened that night.

## 22 SECOND CAUSE FOR DISCIPLINE

### 23 (Dangerous Use of Alcohol)

24 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
25 the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to the extent  
26 or in a manner as to be dangerous or injurious to himself or others. Complainant refers to and by  
27 this reference incorporates the allegations set forth above in paragraph 11, subparagraphs a  
28 through d, inclusive, as though set forth fully.

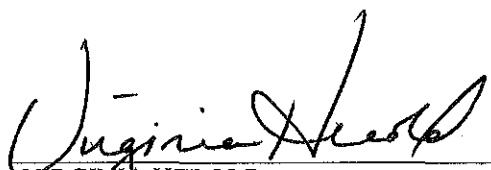
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**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 122550 , issued to Nicholas Joshua Franco;
2. Ordering Nicholas Joshua Franco to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/12/14

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

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