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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. 5133

12 **NICOLE GARCIA**  
13 **3501 E. Rialto Avenue**  
**Fresno, CA 93726**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
15 **107019**

16 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 ("Board"), Department of Consumer Affairs.

21 2. On or about September 20, 2010, the Board issued Original Pharmacy Technician  
22 Registration Number TCH 107019 ("registration") to Nicole Garcia ("Respondent"). The  
23 registration expired on January 31, 2014.

24 **JURISDICTION**

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

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1 **STATUTORY PROVISIONS**

2 4. Code section 4300 states, in pertinent part:

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

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

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

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

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the  
13 board in its discretion may deem proper . . .

14 5. Code section 4300.1 states:

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

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

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

26 . . . .

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

. . . .

(l) The conviction of a crime substantially related to the qualifications,  
functions, and duties of a licensee under this chapter. The record of conviction of a  
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
States Code regulating controlled substances or of a violation of the statutes of this  
state regulating controlled substances or dangerous drugs shall be conclusive  
evidence of unprofessional conduct. In all other cases, the record of conviction shall  
be conclusive evidence only of the fact that the conviction occurred. The board may  
inquire into the circumstances surrounding the commission of the crime, in order to

1 fix the degree of discipline or, in the case of a conviction not involving controlled  
2 substances or dangerous drugs, to determine if the conviction is of an offense  
3 substantially related to the qualifications, functions, and duties of a licensee under this  
4 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
5 contendere is deemed to be a conviction within the meaning of this provision. The  
6 board may take action when the time for appeal has elapsed, or the judgment of  
7 conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under  
9 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
10 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
11 dismissing the accusation, information, or indictment . . .

7 **COST RECOVERY**

8 7. Code section 125.3 provides, in pertinent part, that a Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Criminal Conviction)**

14 8. Respondent is subject to disciplinary action pursuant to Code section 4301,  
15 subdivision (l), in that on or about October 4, 2013, in the criminal proceeding entitled *People vs.*  
16 *Nicole Garcia* (Super. Ct. Fresno County, Case No. F13907963), Respondent pled no contest to  
17 violating Penal Code section 459/460, subdivision (a) (first degree burglary), a felony, a crime  
18 substantially related to the qualifications, functions, and duties of a pharmacy technician. On or  
19 about November 1, 2013, the imposition of Respondent's sentence was suspended and  
20 Respondent was placed on formal probation for 3 years on terms and conditions, including that  
21 Respondent enroll in Mental Health, a 52 week Batterer's Treatment Program and a 6 month  
22 substance abuse program; submit to alcohol and drug testing as required by the Court or  
23 Probation Officer; not contact the victim or the victim's family members without the consent of  
24 the Probation Officer or the Court; and comply with the criminal protective order/stay away  
25 provisions for 10 years. Respondent was also ordered to serve 365 days in the Fresno County  
26 Jail. The circumstances of the crime are set forth in paragraphs 9 through 11 below.

27 9. On or about August 19, 2013, Fresno Police Department ("FPD") officers responded  
28 to a report of a female, later identified as Respondent, breaking into an apartment while armed

1 with a knife. Upon arrival, the officers observed a broken window with blood on the glass and  
2 blood smeared on the curtains. The officers could hear a male and female inside the residence  
3 and heard the male say, "Stop". The officers forced entry into the locked residence and observed  
4 the victim holding Respondent against a wall. Respondent was armed with a large knife. The  
5 officers deployed a Taser to Respondent and were able to get the knife away from her; however,  
6 they noted she had a second knife. The officers cycled the Taser four additional times and were  
7 finally able to get the second knife away from Respondent.

8 10. The victim reported that he heard banging at his front door and then his niece and  
9 nephew screamed, "it's Nicole, hide". The children hid in the bedroom, terrified. The victim  
10 stated that he went outside to talk to Respondent and she indicated she was going to kill him and  
11 then herself. Respondent produced a knife and began cutting at her throat. The victim ran back  
12 inside and locked the door. Respondent broke out the bedroom window and starting crawling  
13 through the broken window. The victim slammed his bedroom door and ran out to the patio  
14 where he retrieved a shovel for protection. When the victim went back into the apartment, he saw  
15 Respondent in the hallway with a second knife. The victim stated Respondent kept repeating that  
16 she was going to kill him, then everyone else in the apartment, and then herself. The victim  
17 indicated that he was able to grab Respondent's wrists and pin her against a wall until police  
18 arrived. The victim stated that he felt he was going to die and that Respondent was probably  
19 going to stab him if he let go of her. The victim indicated that he had pain on his forearm and  
20 officers observed what appeared to be teeth marks.

21 11. Respondent was taken by ambulance to Community Regional Medical Center  
22 (Respondent had cuts on her arms, legs, neck and head). One of the officers followed the  
23 ambulance to the medical center and attempted to get a statement from Respondent. Respondent  
24 was uncooperative with the officer and had a blank stare on her face. Respondent told the officer  
25 to believe what the victim said because he can manipulate people into believing what he wants.  
26 Respondent provided no additional statement. The officer placed Respondent on a 5150 hold  
27 based on her threats of killing herself and others.

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1 **SECOND CAUSE FOR DISCIPLINE**

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

3 12. Respondent is subject to disciplinary action pursuant to Code section 4301,  
4 subdivision (f), for unprofessional conduct, in that Respondent committed acts involving moral  
5 turpitude, dishonesty, fraud, deceit, and/or corruption, as set forth in paragraphs 8 through 11  
6 above, and as follows: On or about August 11, 2013, an FPD officer responded to a call of a  
7 disturbance. The victim reported that Respondent was outside his residence, drunk, and was  
8 refusing to leave. Upon arrival, the officer observed Respondent exiting the apartment complex  
9 with blood on her hands and legs. Respondent stated that she had broken a window. The officer  
10 could smell the odor of alcohol emitting from Respondent's breath. The victim arrived at the  
11 scene and stated that Respondent had broken the front window to his apartment. Another officer  
12 arrived to assist and stood by with Respondent. The victim reported that he had dated  
13 Respondent for approximately two weeks, but had broken up with her approximately three  
14 months earlier. The victim indicated that Respondent had been trying to fight his new girlfriend  
15 and that she had showed up at his residence uninvited and refused to leave. Later, Respondent  
16 admitted to the officers that she had broken the window with her fist. The officers arrested  
17 Respondent for violating Penal Code section 594, subdivision (b)(1) (vandalism).

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107019,  
22 issued to Nicole Garcia;

23 2. Ordering Nicole Garcia to pay the Board of Pharmacy the reasonable costs of the  
24 investigation and enforcement of this case, pursuant to Business and Professions Code section  
25 125.3;

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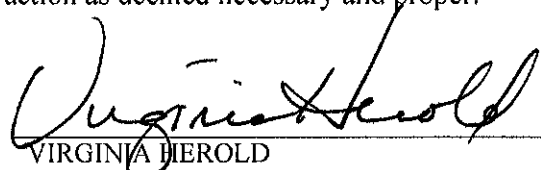
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/1/14



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

SA2014114890