

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
3 SUSANA A. GONZALES  
Deputy Attorney General  
4 State Bar No. 253027  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2221  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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. 5677

12 **CYNTHIA GUTIERREZ**  
13 **7586 Layton St.**  
**Rancho Cucamonga, CA 91730**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **75100**

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about April 24, 2007, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 75100 to Cynthia Gutierrez ("Respondent"). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought in this  
25 Accusation and will expire on October 31, 2016, unless renewed.

26 ///

27 ///

28 ///





1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment.”

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

9 9. Section 493 of the Business and Professions Code States:

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

19 “As used in this section, ‘License’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

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

27 ///

28



1           15. On or about April 5, 2013, the San Bernardino Sheriff's Department received a report  
2 of a man and woman fighting in a red pick-up truck in Rancho Cucamonga, California. Officer 1  
3 located the red pick-up truck and observed it shaking from side to side. Officer 1 also heard  
4 screaming and yelling coming from inside the vehicle. Officer 1 approached the driver of the  
5 vehicle, a man who was later identified as Respondent's boyfriend, MB. MB admitted that he and  
6 the woman, later identified as Respondent, were having an argument. Officer 1 began questioning  
7 MB while Officer 2 and Officer 3 arrived on the scene and questioned Respondent.

8           16. While Officer 2 questioned Respondent, the officer noticed that she was extremely  
9 nervous and fidgety. Respondent initially denied ever taking methamphetamines. When  
10 questioned again by Officer 2, Respondent admitted she had taken methamphetamine with a friend  
11 the previous day. Officer 2 administered a series of field sobriety tests to Respondent, which she  
12 performed poorly. Officer 2 arrested Respondent for driving under the influence of a controlled  
13 substance. Respondent provided a blood sample to law enforcement.

14           17. On or about September 9, 2015, in a criminal matter in the San Bernardino County  
15 Superior Court entitled, "*People v. Cynthia Gutierrez*," Case No. MWV1303852, Respondent was  
16 convicted by a plea of nolo contendere of fighting in public, an infraction. (Penal Code, § 415).  
17 Respondent was ordered to pay \$485.00 by September 1, 2016.

18           18. Following a report that there were individuals illegally occupying or "squatting" in a  
19 residence in Apple Valley, California, deputies from the San Bernardino County Sheriff's  
20 Department went to the residence on March 21, 2015, to investigate. The deputies were met by  
21 Respondent, and they discovered that she had two active misdemeanor warrants for her arrest.  
22 The deputies determined that Respondent's boyfriend, MB, a wanted felon, was also living at the  
23 residence with Respondent. Respondent was taken into custody for the active warrants. During  
24 Respondent's arrest, the deputies warned her that MB was a wanted felon, and that if she was  
25 found harboring MB, she would be arrested as an accessory.

26           19. On or about March 22, 2015, the San Bernardino County Sheriff's deputies returned  
27 to the residence in Apple Valley in order to service a warrant for MB's arrest. One of the deputies  
28 knocked on the front door of the residence. Respondent was inside the home and took several

1 minutes to respond to the knocking. When Respondent finally responded, she stated that she was  
2 going to open the door, yet she still waited several minutes to do so. When she finally opened the  
3 door, she blocked the doorway and denied that her boyfriend, MB, was there. The deputies had to  
4 physically move Respondent out of the way in order to enter the home. Meanwhile, MB was  
5 found attempting to flee through the rear entrance of the residence, where deputies were waiting.  
6 MB was arrested and taken into custody. Respondent was arrested as an accessory for harboring  
7 MB.

8 20. Deputies determined that the residence in Apple Valley was owned by a deceased  
9 person and had been vacant for some time. When deputies entered the residence, they found the  
10 home ransacked with the deceased owner's belongings all over the floor. There were multiple  
11 animals running in and out, urinating and defecating all over the residence. After Respondent and  
12 MB's arrest, one of the deputies contacted animal control, who took custody of three dogs and a  
13 cat that were at the residence. They deputy also found a lock picking kit with several lock picking  
14 keys inside the bedroom of the residence.

15 21. On or about March 22, 2015, deputies questioned Respondent following her arrest.  
16 Respondent admitted that she had been living in the home in Apple Valley for several months. She  
17 also admitted that she had taken over another vacant home and that she planned to move to that  
18 home soon. Respondent never attempted to contact the lawful owners of either property, and she  
19 erroneously believed that by signing and notarizing homestead documents, she had a legal right to  
20 occupy these vacant homes.

21 **FIRST CAUSE FOR DISCIPLINE**  
22 (General Unprofessional Conduct)  
23 (Bus. & Prof. Code, §§ 4301)

24 22. Respondent has subjected her Pharmacy Technician's Registration to discipline  
25 because she engaged in unprofessional conduct. (Bus. & Prof. Code, § 4301(f)). The  
26 circumstances are set forth in paragraphs 14 through 21, above.

26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND CAUSE FOR DISCIPLINE**

(Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)  
(Bus. & Prof. Code, §§ 4301, subd. (f))

23. Respondent has subjected her Pharmacy Technician's Registration to discipline because she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, §§ 4301(f)). The circumstances are set forth in paragraphs 18 through 21, above.

**THIRD CAUSE FOR DISCIPLINE**

(Use of a Controlled Substance)  
(Bus. & Prof. Code, §§ 4301, subd. (h))

24. Respondent has subjected her Pharmacy Technician's Registration to discipline in that she self-administered a dangerous drug or controlled substance. (Bus. & Prof. Code, §§ 4301(h)). The circumstances are set forth in paragraphs 14 through 16, above.

**FOURTH CAUSE FOR DISCIPLINE**

(Substantially Related Conviction)  
(Bus. & Prof. Code, §§ 4301, subd. (l), 490; Cal. Code Regs., tit. 16, § 1770)

25. Respondent has subjected her Pharmacy Technician's Registration to discipline because she was convicted of an offense substantially related to the qualifications, functions, and duties of a pharmacy technician as defined by California Code Regulations, title 16, section 1770. (Bus. & Prof. Code, §§ 4301, subd. (l), 490). The circumstances are set forth in paragraph 17, above.

**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 75100, issued to Cynthia Gutierrez;
2. Ordering Cynthia Gutierrez 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;

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 7/30/16 Virginia Herold

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

LA2015604072  
90657123.doc