# BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WERNER ERNESTO ESCOBAR 3948 Halldale Ave. Los Angeles, CA 90062

Pharmacy Technician Registration No. TCH 74320 Case No. 5590

Respondent.

# **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board

of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on November 16, 2016.

It is so ORDERED on October 17, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

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1	KAMALA D. HARRIS Attorney General of California	·	
2	ARMANDO ZAMBRANO Supervising Deputy Attorney General		
3	CHRISTINE J. LEE Deputy Attorney General		
4	State Bar No. 282502 300 So. Spring Street, Suite 1702		
5	Los Angeles, CA 90013		
б	Telephone: (213) 897-2539 Facsimile: (213) 897-2804 Attorneys for Complainant		
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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	In the Matter - file A - month is in the		
11	In the Matter of the Accusation Against: Case No. 5590		
12	WERNER ERNESTO ESCOBAR 3948 Halldale Ave.		
13	Los Angeles, CA 90062 Bhormany Tachnician Desistantian Name Territory Structure Struc	•	
14	Pharmacy Technician Registration No. TCH 74320		
15	Respondent.		
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17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
18	entitled proceedings that the following matters are true:		
19	PARTIES		
20	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
21	She brought this action solely in her official capacity and is represented in this matter by Kamala		
22	D. Harris, Attorney General of the State of California, by Christine J. Lee, Deputy Attorney		
23	General.		
24	2. Werner Brnesto Escobar (Respondent) is representing himself in this proceed	eding and	
25	has chosen not to exercise his right to be represented by counsel.		
26	3. On or about February 6, 2007, the Board of Pharmacy issued Pharmacy Technician		
27	Registration No. TCH 74320 to Werner Ernesto Escobar (Respondent). The Pharmacy		
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Technician Registration was in full force and effect at all times relevant to the charges brought in 1 Accusation No. 5590. The Registration expired on June 30, 2016, and is now delinquent. 2 3 JURISDICTION Accusation No. 5590 was filed before the Board of Pharmacy (Board), Department of 4. 4 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other 5 statutorily required documents were properly served on Respondent on June 6, 2016. Respondent 6 timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5590 is 7 attached as Exhibit A and incorporated by reference. 8 9 ADVISEMENT AND WAIVERS Respondent has carefully read, and understands the charges and allegations in 5. 10 Accusation No. 5590. Respondent also has carefully read, and understands the effects of this 11 Stipulated Surrender of License and Order. 12 Respondent is fully aware of his legal rights in this matter, including the right to a б. 13 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at 14 his own expense; the right to confront and cross-examine the witnesses against him; the right to 15 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel 16 the attendance of witnesses and the production of documents; the right to reconsideration and 17 court review of an adverse decision; and all other rights accorded by the California 18 Administrative Procedure Act and other applicable laws. 19 Respondent voluntarily, knowingly, and intelligently waives and gives up each and 20 7. every right set forth above. 21 22 CULPABILITY Respondent admits the truth of each and every charge and allegation in Accusation 23 8. No. 5590, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician 24 Registration No. TCH 74320 for the Board's formal acceptance. 25 Respondent understands that by signing this stipulation he enables the Board to issue 26 9. an order accepting the surrender of his Pharmacy Technician Registration without further process. 2728 111

#### CONTINGENCY

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10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
 12 copies of this Stipulated Surrender of License and Order, including Portable Document Format
 13 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that
the Board may, without further notice or formal proceeding, issue and enter the following Order:

#### <u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 74320, issued
 to Respondent Werner Ernesto Escobar, is surrendered and accepted by the Board of Pharmacy.

The surrender of Respondent's Pharmacy Technician Registration and the acceptance
 of the surrendered license by the Board shall constitute the imposition of discipline against
 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
 Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a Pharmacy Technician Registration in California as of the effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
4 issued, his wall certificate on or before the effective date of the Decision and Order.

4. If he ever applies for licensure or petitions for reinstatement in the State of California,
the Board shall treat it as a new application for licensure. Respondent must comply with all the
laws, regulations and procedures for licensure in effect at the time the application or petition is
filed, and all of the charges and allegations contained in Accusation No. 5590 shall be deemed to
be true, correct and admitted by Respondent when the Board determines whether to grant or deny
the application or petition.

11 5. Respondent shall pay the agency its costs of investigation and enforcement in the
12 amount of \$1,877.50 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or
petition for reinstatement of a license, by any other health care licensing agency in the State of
California, all of the charges and allegations contained in Accusation, No. 5590 shall be deemed
to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
other proceeding seeking to deny or restrict licensure.

18 7. Respondent may not apply for any license, permit, or registration from the board for
19 three (3) years from the effective date of this decision. Respondent stipulates that should he apply
20 for any license from the board on or after the effective date of this decision, all allegations set
21 forth in the accusation shall be deemed to be true, correct and admitted by respondent when the
22 board determines whether to grant or deny the application.

8. Respondent shall satisfy all requirements applicable to that license as of the date the
application is submitted to the board, including, but not limited to certification by a nationally
recognized body prior to the issuance of a new license. Respondent is required to report this
surrender as disciplinary action.

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Stipulated Surrender of License (Case No. 5590)

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· 1	ACCEPTANCE		
2	I have carefully read the Stipulated Surrender of License and Order. I understand the		
3	stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this		
4	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to		
5	be bound by the Decision and Order of the Board of Pharmacy.		
6	A		
7	DATED: 08/26/2016		
8	WERNER ERNESTO ESCOBAR Respondent		
9			
10	ENDORSEMENT		
11	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted		
12	for consideration by the Board of Pharmacy of the Department of Consumer Affairs,		
13	Dated: 9/2/11 Respectfully submitted,		
14	KAMALA D. HARRIS Attorney General of California		
15	ARMANDO ZAMBRANO Supervising Deputy Attorney General		
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18	CHRISTINE J. LEH Deputy Attorney General		
19	Attorneys for Complainant		
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Stipulated Surrender of License (Case No. 5590)

# Accusation No. 5590

Exhibit A

KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Senior Assistant Attorney General ARMANDO ZAMBRANO Supervising Deputy Attorney General State Bar No. 225325 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2542 Facsimile: (213) 897-2804

Attorneys for Complainant

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#### BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Case No. 5590

ACCUSATION

In the Matter of the Accusation Against:

WERNER ERNESTO ESCOBAR 639 N. Heliotrope Dr., Apt C Los Angeles, CA 74320

Pharmacy Technician Registration No. TCH 74320

Respondent.

Complainant alleges:

#### **PARTIES**

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

2. On or about February 6, 2007, the Board issued Pharmacy Technician Registration No. TCH 74320 to Werner Ernesto Escobar, aka Werner E. Escobar Rivera ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

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(WERNER ERNESTO ESCOBAR) ACCUSATION

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

JURISDICTION

4. Section 4300.1 of the Code 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."

5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et secq.)] and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very license issued may be suspended or revoked."

# STATUTORY PROVISIONS

7. Section 4301 of the Code states, in pertinent part:

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

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

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COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

# FIRST CAUSE FOR DISCIPLINE

### (Dangerous Use of Alcohol)

9. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered alcoholic beverage to himself to the extent or in a manner as to be dangerous or injurious to himself or others.

a. On or about June 29, 2014, California Highway Patrol officers responded to a vehicle fire on the freeway. Respondent and three other individuals were observed running away from the scene. Upon contact, one of the passengers admitted that the vehicle belonged to the Respondent's father and that Respondent was driving the vehicle. Respondent denied driving the vehicle. He claimed his father knew he took the vehicle. Respondent admitted consuming alcoholic beverages and the police could smell the odor of alcohol emitting from the Respondent's breath. The Respondent had red and watery eyes and was unsteady. Respondent's breath test resulting in a blood alcohol concentration of 0.198% and 0.206%.

# **DISCIPLINE CONSIDERATIONS**

10. To determine the degree of discipline, if any, to be imposed on the Respondent, Complainant alleges:

a. On or about March 8, 2007, after pleading nolo contendere, Respondent was
convicted of one misdemeanor count of violating Los Angeles Municipal Code section 41.24,
subdivision (a) [unlawfully entering private property], in the criminal proceeding entitled *The People of the State of California v. Werner Escobar* (Super. Ct. L.A. County, 2007, No.
7CA06105). The Court sentenced Respondent to three days in jail, and placed him on 12 months

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probation with terms and conditions.

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b. The circumstances underlying the conviction are that on or about March 6, 2007, Los Angeles Police Department officers observed Respondent holding a beer and standing with other individuals at a location that was clearly marked with a "No Trespassing" sign.

c. On or about April 30, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 242 [battery] in the criminal proceeding entitled *The People of the State of California v. Werner Escobar* (Super. Ct. L.A. County, 2009, No. BA344181). The court sentenced Respondent to two days in jail, placed him on three years probation with terms and conditions, ordered him to complete 25 days of community service, and ordered him to make a restitution to the victim. On or about November 8, 2011, the court dismissed the case pursuant to Penal Code section 1203.4.

d. The circumstances underlying the conviction are that on or about July 5, 2008, Los Angeles Police Department officers responded to an assault case. Respondent was engaged in a road rage incident. Respondent sped up to the victim's vehicle and yelled profanities. As the victim tried to get away, the Respondent crashed his vehicle into the victim's vehicle. The victim stopped her vehicle and opened her car door to evaluate the damage. The Respondent then rammed his vehicle into the victim's opened door. Furthermore, the Respondent slapped the victim's left jaw and cheek area using his open right hand.

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

<u>PRAYER</u>

1. Revoking or suspending Pharmacy Technician Registration No. TCH 74320, issued to Werner Ernesto Escobar, aka Werner E. Escobar Rivera;

2. Ordering Werner Ernesto Escobar, aka Werner E. Escobar Rivera to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

6/3/16 DATED:

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

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