

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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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. 3632

12
13 MORGAN LEIGH DIAZ
409 Requeza Street, D1
14 Encinitas, CA 92024

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
72220

16 Respondent.
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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 or about October 4, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 72220 to Morgan Leigh Diaz (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2010, unless renewed.
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1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 4301 of the Code states:

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

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

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

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23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of
25 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 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 fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction
is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
plea of nolo 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

1 subsequent order under Section 1203.4 of the Penal Code allowing the person to
2 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.

3 **REGULATORY PROVISIONS**

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

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

10 11. California Code of Regulations, title 16, section 1769, states:

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12 (b) When considering the suspension or revocation of a facility or a
13 personal license on the ground that the licensee or the registrant has been
14 convicted of a crime, the board, in evaluating the rehabilitation of such person and
his present eligibility for a license will consider the following criteria:

- 15 (1) Nature and severity of the act(s) or offense(s).
16 (2) Total criminal record.
17 (3) The time that has elapsed since commission of the act(s) or offense(s).
18 (4) Whether the licensee has complied with all terms of parole, probation,
19 restitution or any other sanctions lawfully imposed against the licensee.
20 (5) Evidence, if any, of rehabilitation submitted by the licensee.

21 **COST RECOVERY**

22 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
23 the administrative law judge to direct a licentiate found to have committed a violation or
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25 and enforcement of the case.
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1 FIRST CAUSE FOR DISCIPLINE

2 (March 6, 2007 Conviction for DUI on December 9, 2006)

3 13. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
4 Code in that she was convicted of crime that is substantially related to the qualifications, duties,
5 and functions of a pharmacy technician. The circumstances are as follows:

6 a. On or about March 6, 2007, in a criminal proceeding entitled *The People of the*
7 *State of California v. Morgan Leigh Diaz*, in San Diego Superior Court case number CN223306,
8 Respondent was convicted on her plea of guilty for violation of Vehicle Code section 23152(B),
9 driving with a blood alcohol content of .08 percent or more with admission a prior DUI on
10 August 25, 2003. Both case-number CN223306 and case number CN223894 (as set forth below
11 in the second Cause for Discipline) were heard at the same time.

12 b. As a result of her conviction, Respondent was placed on summary probation
13 for five years with terms and conditions, including but not limited to, 96 days in custody on
14 consecutive weekends, payment of fines, fees and restitution, 5 days in public service
15 program/volunteer work, attendance and completion of a Multiple Offender DUI Program in
16 concurrence with Case Number CN223894.

17 c. The circumstances which led to the conviction were that on or about December
18 9, 2007, an officer from the California Highway Patrol observed a vehicle weaving from side to
19 side while traveling eastbound on State Route 78 near Woodland Parkway. After the officer
20 initiated a traffic stop, the driver of the weaving vehicle was identified as Respondent. The
21 officer observed that Respondent's eyes were red and glassy, that she swayed in a circular motion
22 while standing and that she had an odor of an alcoholic beverage on her breath. Respondent
23 admitted that she should not have been driving because she drank too much. She admitted to
24 consuming 3-4 drinks and feeling "buzzed." The officer attempted to explain and demonstrate
25 the Field Sobriety Tests; however, Respondent attempted the tests before the officer was able to
26 finish explaining the tests. Respondent stated, "I've been through this before, I know what's
27 going to happen." Based on Respondent's inability to successfully perform the Field Sobriety
28 Tests and her objective symptoms, the officer arrested Respondent for driving under the

1 influence. Upon arrest, Respondent elected to take a breath test and her blood alcohol content
2 registered at .16 by weight.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(March 6, 2007 Conviction for DUI on January 12, 2007)**

5 14. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
6 Code in that she was convicted of crime that is substantially related to the qualifications, duties,
7 and functions of a pharmacy technician. The circumstances are as follows:

8 a. On or about March 6, 2007, in a criminal proceeding entitled *The People of the*
9 *State of California v. Morgan Leigh Diaz*, in San Diego Superior Court case number CN223894,
10 Respondent was convicted on her plea of guilty for violation of Vehicle Code section 23152(B),
11 driving under the influence of alcohol with a blood alcohol content of .08 percent or greater with
12 admission of the prior DUI on August 25, 2003. Sentencing was combined with the sentencing
13 on her case Number 223306, as detailed in the First Cause for Discipline.

14 b. As a result of her conviction, Respondent was placed on summary probation
15 for five years with terms and conditions, including but not limited to, 96 days in custody on
16 consecutive weekends, payment of fines, fees and restitution, 5 days in public service
17 program/volunteer work, attendance in completion of a Multiple Offender DUI Program in
18 concurrence with Case Number CN223306.

19 c. The circumstances which led to the conviction were that on or about January
20 12, 2007, an officer from the Oceanside Police Department initiated a traffic stop after observing
21 a vehicle travelling at a high rate of speed in a residential area on South Tremont Street. The
22 driver of the vehicle was identified as Respondent. Another officer, who responded to the scene,
23 approached Respondent and attempted to ask her questions. The officer observed that
24 Respondent had a strong odor of alcohol emitting from her breath and body. He also observed
25 that she spoke with thick, slurred speech, she had blood-shot and watery eyes, and swayed side to
26 side while she talked to the officer. Respondent failed to perform Field Sobriety Tests as
27 explained and demonstrated. Respondent was arrested for driving under the influence. At the
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1 station, Respondent was administered two breath tests and her blood alcohol content registered at
2 .17 and .18 percent by weight.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(October 14, 2009 Conviction for Driving On a Suspended License on June 4, 2009)**

5 15. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
6 Code in that she was convicted of crime that is substantially related to the qualifications, duties,
7 and functions of a pharmacy technician. The circumstances are as follows:

8 a. On or about June 30, 2009, in a criminal proceeding entitled *The People of the*
9 *State of California v. Morgan Leigh Diaz*, in San Diego Superior Court case number CN263749,
10 Respondent was charged with violations of Vehicle Code section 14601.2(a) driving when
11 privilege suspended for prior DUI conviction, a misdemeanor. It was further alleged that
12 Respondent had a prior conviction in Riverside County Superior Court Case number 028782 for
13 the violation of Vehicle Code Section 14601.2(d)(2), driving on a suspended license. The
14 criminal complaint also charged Respondent with driving a high rate of speed greater than 70
15 miles per hour in violation of Vehicle Code Section 22356(b), an infraction, and a violation of
16 Vehicle Code Section 14601.5(a), driving when privilege suspended.

17 b. On or about August 4, 2009, Respondent failed to appear in court for the
18 arraignment on this case. As a result, a bench warrant was issued in the amount of \$15,000. The
19 bench warrant was later rescinded on August 6, 2009 when Respondent's attorney appeared on
20 her behalf.

21 c. On or about October 14, 2009, Respondent pled guilty to the misdemeanor
22 violation of Vehicle Code section 14601.2(a), driving while her license was suspended for a prior
23 DUI conviction. As a result of her conviction, Respondent was placed on summary probation for
24 a period of 3 years under terms and conditions including, 10 days in custody beginning on
25 November 13, 2009, payment of all fines, fees, and restitution, and enrollment in a public service
26 program or volunteer work which was ordered to be completed by November 4, 2010.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)

3 16. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
4 Respondent used alcohol to an extent which was dangerous to herself or others, as is set forth
5 above in paragraphs 13 and 14, which are incorporated herein by reference as though fully set
6 forth herein.

7 DISCIPLINARY CONSIDERATIONS

8 17. To determine the degree of discipline, if any, to be imposed on Respondent,
9 complainant alleges that on or about August 25, 2003, in a criminal proceeding entitled *The*
10 *People of the State of California v. Morgan Leigh Diaz*, in Riverside Superior Court case number
11 SWM019848, Respondent was convicted on her plea of guilty for violation of Vehicle Code
12 section 23152(A), driving under the influence of alcohol and Vehicle Code section 23152(B),
13 driving with a blood alcohol content of .08 or more. The facts and circumstances which led to the
14 conviction were that on or about June 22, 2003, Respondent was arrested for driving under the
15 influence of alcohol. As a result of her conviction, Respondent was placed on summary probation
16 for a period of 3 years. Respondent was ordered to obey all laws, sentenced to 15 days in jail,
17 ordered to complete a sheriff's labor program commencing August 25, 2003, required to pay all
18 fines and fees, ordered to abstain from the use of alcoholic beverages, required to attend and
19 complete a First Offender DUI Program, among other terms and conditions.

20 18. Complainant further alleges that on or about September 14, 2005, in a criminal
21 proceeding entitled *The People of the State of California v. Morgan Leigh Diaz*, in Riverside
22 Superior Court case number SWM040469, Respondent was convicted on her plea of guilty for
23 violation of Penal Code section 647(F), public intoxication, a misdemeanor. As a result of her
24 plea, Respondent was ordered to pay fines, fees and restitution and the Court denied probation.

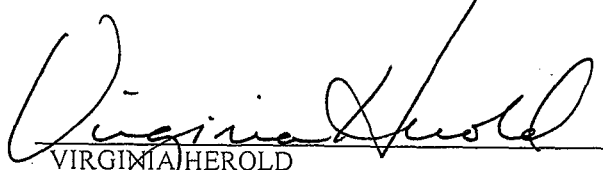
25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 72220, issued to Morgan Leigh Diaz.
2. Ordering Morgan Leigh Diaz 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: 5/6/10



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

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