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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3650

13 **FRANCISCO J. LEYVA**  
14 1505 Watt Avenue  
Sacramento, CA 95684

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

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16 Pharmacy Technician License No. TCH 38071

17 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 10, 2001, the Board of Pharmacy issued Pharmacy Technician  
24 License Number TCH 38071 to Francisco J. Leyva (Respondent). The Pharmacy Technician  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on May 31, 2011, unless renewed.

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**JURISDICTION**

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

**STATUTORY AND REGULATORY PROVISIONS**

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

10         5. Section 492 of the Code states:

11         Notwithstanding any other provision of law, successful completion of any diversion  
12 program under the Penal Code, or successful completion of an alcohol and drug problem  
13 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
14 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
15 [Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
16 division, from taking disciplinary action against a licensee or from denying a license for  
17 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
18 record pertaining to an arrest.

19         6. Section 493 of the Code states:

20         Notwithstanding any other provision of law, in a proceeding conducted by a board within  
21 the department pursuant to law to deny an application for a license or to suspend or revoke a  
22 license or otherwise take disciplinary action against a person who holds a license, upon the  
23 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
24 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
25 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
26 and the board may inquire into the circumstances surrounding the commission of the crime in  
27 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
28 qualifications, functions, and duties of the licensee in question.

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7. Section 4300 provides in relevant part:

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

8. Section 4301 provides in relevant part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, 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.

(h) ...use of ...alcoholic beverage to the extent or in a manner dangerous to oneself ... to oneself ... or to others or the public.

(k) ...conviction of more that more than one misdemeanor involving use, consumption, or self-administration of alcohol.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

**COST RECOVERY**

9. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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.

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2 **FIRST CAUSE FOR DISCIPLINE**

(Conviction of Crime)

3 10. Respondent has subjected his license to disciplinary action pursuant to section  
4 4301(h) in that respondent was convicted by a plea of no contest on May 27, 2003 for Driving  
5 Under the Influence of Alcohol with a blood alcohol in excess of .20. The circumstances are as  
6 follows:

7 11. In or about March 8, 2002 respondent operated a motor vehicle on public roads with a  
8 blood alcohol reading of .22.

9 **SECOND CAUSE FOR DISCIPLINE**

(Conviction of Crime)

10 12. Respondent has subjected his license to disciplinary action pursuant to section  
11 4301(h) in that respondent was convicted of Driving Under the Influence with prior conviction by  
12 his plea of no contest on February 29, 2008. The circumstances are as follows:

13 13. On or about December 23, 2007, respondent was operating a motor vehicle on or  
14 about J Street and 29<sup>th</sup> Street, Sacramento, California with a blood alcohol level of .26.

15 **THIRD CAUSE FOR DISCIPLINE**

(Conviction of Crime)

16 14. Respondent has subjected his license to disciplinary action pursuant to section  
17 4301(h) in that respondent was convicted of Driving Under the Influence with two prior  
18 convictions and driving with a suspended license by his plea of no contest on July 31, 2008. The  
19 circumstances are as follows:

20 15. On April 12, 2008 respondent was observed by the California Highway Patrol driving  
21 eastbound on Madison Avenue, Sacramento County at 63 mph in a 45 mph zone. Respondent  
22 was observed weaving in and out of traffic until the arresting officers could reach respondent to  
23 stop him. Respondent denied drinking alcohol but subsequently was determined to have a blood  
24 alcohol of .20. At the time respondent was operating the vehicle he did not have a valid  
25 California Driver's license.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Use of Alcohol-Danger to Others)

3 16. Respondent has subjected his license to disciplinary action pursuant to section  
4 4301(h) in that respondent used alcohol to an extent or in a manner so as to be dangerous to  
5 himself or others. The circumstances are as follows:

6 17. On or about March 3, 2008 respondent consumed alcohol to the extent that he  
7 violated a court order restraining him from going upon the property of another. Respondent  
8 entered the property of victim YO with knowledge and having been served with a restraining  
9 order. Respondent was arrested based threats made to victim YO and the arresting officer's  
10 observation respondent was intoxicated to the degree that respondent was a danger to himself or  
11 others.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct-Dangerous Conduct)

14 18. Respondent has subjected his license to disciplinary action pursuant to section  
15 4301(h) in that respondent used alcohol to such an extent as to be dangerous to himself or others.  
16 The circumstances are as follows:

17 19. Complainant incorporates the allegations set forth in Causes for Discipline One (1)  
18 through and including three (3). Respondent in performing the acts alleged in these Causes for  
19 Discipline used alcohol to an extent he was a danger to himself and others.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct)

22 20. Respondent's license is subject to disciplinary action pursuant to section 4301(f) in  
23 that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption.  
24 The circumstances are as follows:

25 21. Paragraphs 17,18 and 20 are incorporated by reference as though set forth at length  
26 herein. Respondent knowingly violated a lawful court order by going upon the premises of  
27 another. Respondent operated a motor vehicle without a valid driver's license.

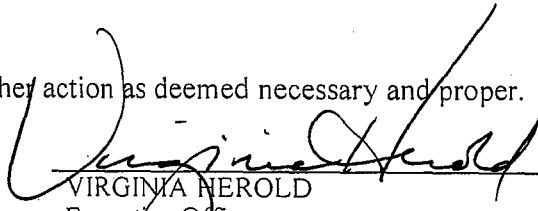
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 38071, issued to Francisco J. Levya.
2. Ordering Francisco J. Leyva 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: 7/16/10   
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

SA2010101204