

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 MICHAEL A. CACCIOTI  
Deputy Attorney General  
4 State Bar No. 129533  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-8932  
6 Facsimile: (213) 897-2804

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. 4501
12 <b>LYDIA TORRES</b>	
13 P.O. Box 372114	
13 Reseda, CA 91337	<b>ACCUSATION</b>
14 Pharmacy Technician Registration No. TCH 57507	
15 Respondent.	

16  
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 (Board).  
22 2. On or about October 21, 2004, the Board issued Pharmacy Technician Registration  
23 No. TCH 57507 to Lydia Torres (Respondent). The Pharmacy Technician Registration was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on October  
25 31, 2014, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

6. Section 4300.1 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."

7. Section 4301 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:

1           ....  
2           “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
4 whether the act is a felony or misdemeanor or not.

5           ....  
6           “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
10 practice authorized by the license.

11           ....  
12           “(j) The violation of any of the statutes of this state, or any other state, or of the United  
13 States regulating controlled substances and dangerous drugs.

14           ....  
15           “(k) The conviction of more than one misdemeanor or any felony involving the use,  
16 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
17 combination of those substances.

18           “(l) The conviction of a crime substantially related to the qualifications, functions, and  
19 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
21 substances or of a violation of the statutes of this state regulating controlled substances or  
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
24 The board may inquire into the circumstances surrounding the commission of the crime, in order  
25 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
26 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
28 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning

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

7 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
8 violation of or conspiring to violate any provision or term of this chapter or the applicable federal  
9 and state laws and regulations governing pharmacy, including regulations established by the  
10 board or by any other state or federal regulatory agency."

### 11 REGULATORY PROVISIONS

12 8. California Code of Regulations, title 16, section 1770, states:

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

### 19 COST RECOVERY

20 9. Section 125.3 states, in pertinent part, that the Board may request the administrative  
21 law judge to direct a licensee found to have committed a violation or violations of the licensing  
22 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
23 case.

### 24 FIRST CAUSE FOR DISCIPLINE

#### 25 (Convictions of Substantially-Related Crimes)

26 10. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,  
27 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the  
28 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially

1 related to the qualifications, functions or duties of a registered pharmacy technician which to a  
2 substantial degree evidence her present or potential unfitness to perform the functions authorized  
3 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

4 a. On or about March 20, 2012, after pleading *nolo contendere*, Respondent was  
5 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
6 [driving while having 0.08%, or more, by weight, of alcohol in the blood], in the criminal  
7 proceeding entitled *The People of the State of California v. Lydia Torres* (Super. Ct. Los Angeles  
8 County, 2012, No. 2NW00528). The court sentenced Respondent to serve 10 days in jail, placed  
9 her on probation for a period of 60 months, and fined her. The circumstances surrounding the  
10 conviction are that on or about February 06, 2012, California Highway Patrol Officers, while on  
11 duty, during a routine traffic stop, stopped Respondent after observing her driving at a high rate  
12 of speed, and weaving in and out of lanes multiple times. The officers made contact with  
13 Respondent and immediately detected an odor of an alcoholic beverage emitting from within her  
14 vehicle. The Respondent admitted to the officers that she drank two glasses of wine several hours  
15 prior to driving. The Respondent agreed to a series of field sobriety tests which she failed to  
16 complete satisfactorily. The Respondent subsequently agreed to take a preliminary alcohol  
17 screening test (PAS) test with results of .185% BAC, .104% BAC, and .200% BAC.

18 b. On or about March 19, 2007, Respondent was convicted of one misdemeanor count  
19 of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08%, or more,  
20 by weight, of alcohol in the blood], in the criminal proceeding entitled *The People of the State of*  
21 *California v. Lydia Torres* (Super. Ct. Los Angeles County, 2007, No. 7VY0120001). The court  
22 sentenced Respondent to serve 96 hours in jail, placed her on probation for a period of 48 months,  
23 and fined her. The circumstances surrounding the conviction are that on or about March 18,  
24 2007, the Respondent did unlawfully drive a vehicle while having 0.08%, or more, by weight, of  
25 alcohol in her blood. Respondent submitted to a blood test that indicated a blood alcohol content  
26 level of 0.21% BAC.

27 c. On or about February 23, 2007, Respondent was convicted of one misdemeanor count  
28 of violating Vehicle Code section 20002, subdivision (a) [hit and run: property damage], in the

1 criminal proceeding entitled *The People of the State of California v. Lydia Torres* (Super. Ct. Los  
2 Angeles County, 2007, No. LAM1MT0230901). The court sentenced Respondent to serve 10  
3 days in jail, placed her on probation for a period of 36 months, and fined her. The circumstances  
4 surrounding the conviction are that on or about February 22, 2007, the Respondent did knowingly  
5 and unlawfully hit a vehicle causing damage to the vehicle, failed to stop, violating Vehicle Code  
6 section 20002, subdivision (a).

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Alcohol Related Convictions)**

9 11. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
10 subdivision (k), on the grounds of unprofessional conduct, in that on or about March 20, 2012,  
11 Respondent was convicted of crimes involving the use, consumption, or self-administration of  
12 alcohol and / or dangerous drugs. Complainant refers to, and by this reference incorporates, the  
13 allegations set forth above in paragraph 10, subdivisions (a) and (b), inclusive, as though set forth  
14 fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 12. Respondent is subject to disciplinary action under sections 4300 and 4301,  
18 subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to  
19 herself alcohol and / or used a dangerous drug to the extent or in a manner as to be dangerous or  
20 injurious to herself, any other person, or the public, or to the extent that such use impairs her  
21 ability to conduct with safety to the public the practice authorized by her license. Complainant  
22 refers to, and by this reference incorporates, the allegations set forth above in paragraph 10,  
23 subdivisions (a) and (b), inclusive, as though set forth fully.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 13. Respondent is subject to disciplinary action under sections 4300 and 4301,  
27 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts  
28 involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 10, subdivisions  
2 (a) through (c), inclusive, as though set forth fully.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Violation of Pharmacy Act)**

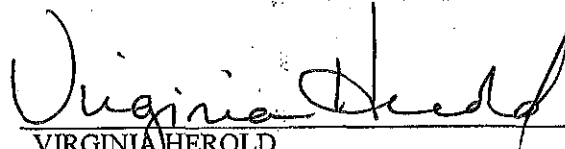
5 14. Respondent is subject to disciplinary action under sections 4300 and 4301,  
6 subdivision (o), on the grounds of unprofessional conduct, in that Respondent was convicted of  
7 crimes and committed acts that violated the Pharmacy Act. Complainant refers to, and by this  
8 reference incorporates, the allegations set forth above in paragraphs 10 through 13, inclusive, as  
9 though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 57507, issued  
14 to Lydia Torres;
- 15 2. Ordering Lydia Torres to pay the Board the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: 2/4/14



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

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