

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:
12 **LYDIA DELIA REYES**
6846 Farrier Avenue
13 Riverside, CA 92507
14 **Pharmacy Technician Registration No. TCH 72680**
Respondent.

Case No. 4758

A C C U S A T I O N

15
16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On October 27, 2006, the Board of Pharmacy issued Pharmacy Technician
21 Registration Number TCH 72680 to Lydia Delia Reyes (Respondent). Respondent has also been
22 known as Lydia Delia Carillo Reyes. The Pharmacy Technician Registration was in full force
23 and effect at all times relevant to the charges brought herein and will expire on April 30, 2014,
24 unless renewed.

25 **JURISDICTION**

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

1 9. Section 4301 of the Code states:

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

6

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

13

14 (l) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction of
16 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
17 United States Code regulating controlled substances or of a violation of the
18 statutes of this state regulating controlled substances or dangerous drugs shall be
19 conclusive evidence of unprofessional conduct. In all other cases, the record of
20 conviction shall be conclusive evidence only of the fact that the conviction
21 occurred. The board may inquire into the circumstances surrounding the
22 commission of the crime, in order to fix the degree of discipline or, in the case of
23 a conviction not involving controlled substances or dangerous drugs, to determine
24 if the conviction is of an offense substantially related to the qualifications,
25 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
26 a conviction following a plea of nolo contendere is deemed to be a conviction
27 within the meaning of this provision. The board may take action when the time
28 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 Section 1203.4 of the Penal
 Code allowing the person to 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.

REGULATORY PROVISIONS

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

(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
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:

///

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

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

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

16 **COST RECOVERY**

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

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(November 16, 2010 Criminal Conviction for DUI on January 12, 2010)**

25 13. Respondent has subjected her pharmacy technician registration to discipline under
26 Code sections 490 and 4301, subdivision (l), in that she was convicted of a crime that is
27 substantially related to the qualifications, functions, and duties of a registered pharmacy
28 technician. The circumstances are as follows:

a. On November 16, 2010, in a criminal proceeding entitled *The People of the
State of California v. Lydia Delia Carillo Reyes*, in the Riverside County Superior Court,
Moreno Valley Courthouse, case number RIM10009271, Respondent was convicted on her plea

1 of guilty to violating VC 23152, subdivisions (a), DUI and (b), driving with a blood alcohol
2 concentration (BAC) of 0.08 percent or more, misdemeanors.

3 b. As a result of the convictions, on November 16, 2010, Respondent was
4 granted 36 months summary probation and sentenced to be committed to the custody of the
5 Riverside County sheriff for 10 days, with nine days to be served under the work release
6 program. Respondent was also ordered to pay fines and penalty assessments, and attend and
7 satisfactorily complete a first offender alcohol and drug education and counseling program for
8 four months.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

11 14. Respondent subjected her pharmacy technician registration to discipline under
12 Code section 4301, subdivision (h) in that on January 12, 2010, detailed in paragraph 13, above,
13 and February 4, 2013, she used alcohol to the extent and in a manner that was dangerous and
14 injurious to herself and to the public. The circumstances are as follows:

15 a. On February 4, 2013, Respondent drove at a speed of 83 miles per hour
16 along interstate highway 5 while passing Valencia Boulevard in Santa Clarita, California.
17 Officers of the Newhall Area Office of the California Highway Patrol Southern Division who
18 clocked Respondent's speed initiated an enforcement stop. The officers immediately observed
19 Respondent's red and watery eyes and detected alcohol from Respondent's breath and from
20 inside her car. Three empty beer bottles were found in the rear seat of Respondent's vehicle but
21 she denied having anything to drink. Respondent failed the field sobriety tests, but refused to
22 submit to the preliminary alcohol screening. Respondent was thereafter transported to the Santa
23 Clarita Valley Sheriff's office to be booked. Respondent would not submit to a breath test or a
24 blood test in violation of VC section 23612, within the meaning of VC sections 23577, 23578,
25 and 23538, subdivision (b)(2).

26 b. On February 22, 2013, in a criminal proceeding entitled *The People of the*
27 *State of California vs. Lydia Delia Reyes*, in Los Angeles County Superior Court, North Valley
28 District, Santa Clarita Courthouse, Case Number 3NW00456, Respondent was charged with

1 violation of Vehicle Code (VC) sections 23152, subdivision (a), driving under the influence
2 (DUI) of alcohol, and 14601.2, driving when privilege was suspended for a prior DUI conviction,
3 misdemeanors. Respondent was also alleged to have a prior conviction within ten years of the
4 commission of the offense on November 16, 2010, for violation of VC section 23152, subdivision
5 (b) on January 12, 2010, in the Municipal Court of the Riverside Judicial District in case number
6 100092, a sentencing enhancement pursuant to VC sections 23626 and 23540. On March 28,
7 2013, Respondent failed to appear for arraignment, without sufficient excuse and when not
8 represented by counsel. Hence, the court ordered a bench warrant in the amount of \$30,000.00 for
9 Respondent's arrest.

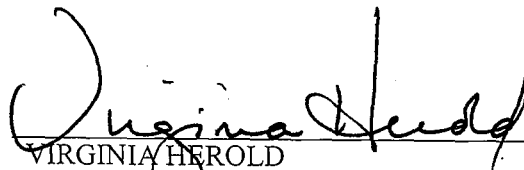
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72680,
14 issued to Lydia Delia Reyes also known as Lydia Delia Carillo Reyes;
 - 15 2. Ordering Lydia Delia Reyes to pay the Board of Pharmacy the reasonable costs of
16 the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3;
 - 18 3. Taking such other and further action as deemed necessary and proper.
- 19
20
21

22 DATED: _____

11/4/13



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

25 SD2013705519
26 70763702.doc