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

12 In the Matter of the Accusation Against:

Case No. 4111

13 **DENISE REA, AKA**
14 **DENISE REA MORALES**
852 Palm Drive
Colton, CA 92324

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 75084

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 April 14, 2007, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 75084 to Denise Rea, aka Denise Rea Morales (Respondent).
25 The Pharmacy Technician Registration was in full force and effect at all times relevant to the
26 charges brought herein and will expire on June 30, 2014, unless renewed.

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JURISDICTION

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 unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides, in pertinent part:

"(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."

6. Section 492 provides, in pertinent part:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that

1 division, from taking disciplinary action against a licensee or from denying a license for
2 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
3 record pertaining to an arrest.

4 "This section shall not be construed to apply to any drug diversion program operated by any
5 agency established under Division 2 (commencing with Section 500) of this code, or any
6 initiative act referred to in that division."

7 7. Section 4060 provides, in pertinent part:

8 "No person shall possess any controlled substance, except that furnished to a person upon
9 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
11 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18 labeled with the name and address of the supplier or producer.

19 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
21 devices."

22 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
23 subject to discipline, including suspension or revocation.

24 9. Section 4301 provides, in pertinent part:

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

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

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

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

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

3 REGULATORY PROVISIONS

4 10. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

11 COST RECOVERY

12 11. Section 125.3 provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 DANGEROUS DRUG

17 12. "Methamphetamine," is a Schedule II controlled substance as designated by Health
18 and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug
19 pursuant to Business and Professions Code section 4022.

20 FIRST CAUSE FOR DISCIPLINE

21 **(Conviction of a Substantially-Related Crime)**

22 13. Respondent is subject to disciplinary action under Code sections 490, and 4301,
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that
24 Respondent was convicted of a crime substantially related to the qualifications, functions or
25 duties of a pharmacy technician, as follows:

26 a. On or about November 18, 2010, Respondent was convicted by the jury of one felony
27 count of violating Vehicle Code section 10851, subdivision (a) [unlawful driving or taking of a
28 vehicle], in the criminal proceeding entitled *The People of the State of California v. Denise Rea*

1 *Morales* (Super. Ct. San Bernardino County, 2010, No. FSB1000484). The court sentenced
2 Respondent to 210 days in jail, and placed her on supervised probation for a period of 36 months,
3 among other terms. The circumstances surrounding the conviction are that on or about February
4 01, 2010, Respondent assisted another in the taking of a vehicle from a casino parking lot without
5 the consent of the vehicle's owner.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Illegal Use of Drugs/Alcohol Posing Danger to Public & Impair Practice)**

8 14. Respondent is subject to disciplinary action under Code sections 492, 4060, and 4301,
9 subdivision (h), in that Respondent used controlled substance to the extent to in a manner as to be
10 dangerous to herself, or to any other person. The circumstances are as follows:

11 a. On or about January 25, 2010, pursuant to her guilty plea to one misdemeanor count
12 of violating Health and Safety Code section 11550, subdivision (a) [use and under the influence
13 of a controlled substance], in the criminal proceeding entitled *The People of the State of*
14 *California v. Denise Rea Morales* (Super. Ct. Los Angeles County, 2009, No. 9JB07533), the
15 court entered a deferred entry of judgment for a period of eighteen (18) months. On or about
16 October 31, 2011, the matter was dismissed pursuant to Penal Code section 1000. The
17 circumstances surrounding the plea are that on or about July 30, 2009, while Respondent's
18 boyfriend was being stopped by a police officer for a traffic violation (talking on the cell phone),
19 Respondent arrived at the scene because the car was rented under her name. During the
20 interview, the officer observed Respondent to have rapid speech, and a white/yellow film affixed
21 to her tongue. Respondent admitted to the officer that she had used "'Speed' two days before."
22 She also admitted to the officer that she had been using "Speed" for approximately four months.
23 During a search of Respondent's person, the officer recovered a zip-loc baggie containing
24 methamphetamine.

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THIRD CAUSE FOR DISCIPLINE

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

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that on or about November 18, 2010, Respondent was convicted of a crime involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 13, subparagraph (a), inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Violating Drug Statutes)

16. Respondent is subject to disciplinary action under Code sections 4060 and 4301, subdivision (j), in that Respondent used and was under the influence of a controlled substance in violation of Health and Safety Code section 11550, subdivision (a). Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 14, subparagraph (a), inclusive, as though set forth fully.

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 Registration No. TCH 75084, issued to Denise Rea, aka Denise Rea Morales;

2. Ordering Respondent 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; and

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

DATED: 4/4/13



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

LA2011601105
2/14/12-IC