

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

LIDIA ARELIS-GUZMAN
1918 Shameran Street
Stockton, CA 95210

Case No. 3135

OAH No. 2008090740

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), first paragraph of the ORDER, appearing on page 8 of the Proposed Decision, is hereby modified for technical reasons as follows:

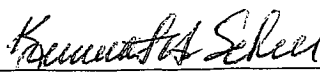
The application of Lidia Arelis-Guzman for the issuance of a pharmacy technician registration is denied. However, respondent shall be issued a probationary license, upon satisfaction of the following: Respondent shall first meet all statutory and regulatory requirements for the issuance of a pharmacy technician registration. Following the satisfaction of this condition, respondent's license shall be issued and immediately revoked, the order of revocation being stayed and respondent placed on probation for a period of four (4) years on the following terms and conditions:

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on May 27, 2009.

IT IS SO ORDERED this 27th day of April, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


KENNETH H. SCHELL
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Statement
of Issues Against:

Case No. 3135

LIDIA ARELIS-GUZMAN
1918 Shameran Street
Stockton, California 95210

OAH No. 2008090740

Pharmacy Technician Registration

Respondent.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, in Sacramento, on November 10, 2008, and February 11, 2009.

Elena L. Almanzo, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board).

Lidia Arelis-Guzman (respondent) was present. She appeared on her own behalf on November 10, 2008. She was represented on February 11, 2009, by Russell S. Humphrey, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on February 11, 2009.

FACTUAL FINDINGS

1. On May 7, 2007, the Board received an Application for Registration as a Pharmacy Technician (Application) from respondent. On August 8, 2007, the Board denied respondent's Application based upon the conviction described in Finding 2, below. Respondent appealed from the Board's denial.

2. On April 23, 2008, in the Superior Court of California, County of San Joaquin, in Case No. SM250660A, entitled *People v. Lidia Guzman*, respondent, upon a plea of no contest, was convicted of violating Penal Code section 261.5, engaging in unlawful sexual intercourse with a minor, a misdemeanor. Respondent is age 28. Her sex offense involved a 17-year old female, referred hereafter to as "minor."

3. The incident leading to respondent's arrest and conviction occurred in May 2006. On June 7, 2006, respondent pled no contest in the San Joaquin County Superior Court to a violation of Penal Code section 288a, subdivision (b)(1), oral copulation with another person who is under 18 years of age. She was given a suspended sentence (180 days) and placed on formal probation for three years under terms and conditions that included her participating in counseling, and paying court fines, restitution and fees. Respondent complied with, and successfully completed the terms of her probation. On April 23, 2008, her formal probation was terminated. The court further vacated the earlier plea she entered on June 7, 2006, and respondent pled at that time to the reduced charge of violation of Penal Code section 261.5, engaging in unlawful sexual intercourse with a minor.

4. In May 2006, respondent was employed as a case worker for the Center for Positive Prevention Alternatives (CPPA), a program that provided emergency shelter, a transitional living program, and a variety of other services for homeless youth in San Joaquin County. While working as an outreach worker, respondent teamed up with minor, who was both a CPPA worker, and also a resident in CPPA's adolescent group home facility. Respondent had met minor earlier at CPPA, but never had a case worker/client relationship with her. They were initially friends and they enjoyed a normal co-worker relationship. The two trusted each other. Over time they developed feelings for each other. Minor was open about her feelings. She called respondent "sexy" and let others know of her infatuation with respondent. Minor made sexual gestures towards respondent. On one occasion, when respondent was bent over, minor ran behind respondent and made pelvic thrusts behind her. Respondent asked her to stop. Minor engaged in other forward and aggressive sexual behavior towards respondent, referring to respondent as her "woman" and her "wifey." Respondent and others knew minor was a lesbian because she was open about it. Respondent at first did not respond in kind to these overt gestures from minor.

5. Respondent was aware that minor was interested in her as more than a friend. Respondent described how over time she started liking minor and having romantic feelings for her. Respondent noted that due to time spent working with minor as a peer, the boundaries that she had initially maintained became blurred. She thought of minor as a friend, and not as the youth that she really was. Respondent began to act on her feelings. Respondent wanted to take care of minor. She described minor as "kind of wild," and did not want her to run away from the group home or to get into trouble. Respondent purchased a cell phone for minor. She also gave minor a diamond ring so that minor could pawn it were she ever to be in need of cash.

Respondent and minor engaged in affectionate behavior. While they were doing outreach work at a park, and when they were alone in a van, they kissed and hugged each other. They also kissed each other outside on a street.

Respondent is married and has two children. She was having marriage difficulties at the time of these events.

6. On Friday, May 5, 2006, respondent made arrangements for an overnight stay at La Quinta Inn, a motel on West March Lane in Stockton, California. She told her husband that she was working graveyard that evening. Just prior to this, minor had called respondent. Minor was in tears because she had just broken up with a girlfriend. Respondent picked up minor and went to the hotel. The two engaged in intimate sexual behavior. Minor performed oral sex on respondent. Respondent denies reciprocating to the same degree, but did kiss minor's vagina. She averred that she stopped because she realized that what she did was wrong and not proper.

Word soon got out that the two had been out together overnight and CPPA commenced an investigation. Respondent resigned the following Monday. The matter was reported to the Stockton Police Department.

7. When initially contacted by the Stockton Police Department, respondent stated that she went to the La Quinta Inn that Friday to see her ex-boyfriend, Israel Botero, and that he had stayed with her all night. She stated that no one else was at the hotel with them. Respondent had even called her ex-boyfriend in advance so that he would provide her with this cover should anyone ask. When Stockton Police Detective Vancil confronted her with contrary information about her being with minor, respondent immediately recanted. Respondent then provided accurate information and otherwise cooperated fully with the police investigation. She described carrying a "big heavy weight" that did not get lifted until she told the Stockton detectives everything.

8. Respondent's offense is substantially related to the qualifications, functions or duties of a pharmacy technician. The sexual offense involved a minor. Robert N. Ratliff, Pharm.D. testified as an expert for the Board. He noted that pharmacy technicians have access to sensitive and personal client medical information. This includes client dates of birth and addresses. Public trust must be maintained, both between the public and pharmacy technicians, and also between co-workers. Dr. Ratliff noted that minors may come into pharmacies with their parents to have prescriptions filled.

Dr. Ratliff also explained that pharmacy is a highly regulated industry and that there is an expectation that pharmacy technicians will be honest and always tell the truth. As discussed above, respondent was not completely forthright when first confronted by police, and her character for honesty directly relates to her qualifications for licensure. She also failed to comply with a directive by Stockton Police that she not call or have further contact with minor. When given an opportunity at hearing to explain why she did so in clear

violation of this order, she explained that she did not consider calling minor on her cell phone to be a violation of the order not to do so, reasoning that as long as she did not actually speak with minor, she had violated no order.

9. As part of respondent's criminal probation she was referred to a sex offender program in San Joaquin County. She worked in this program directly with G. Kim Sutterfield, Ph.D. The program consisted of weekly group meetings facilitated by a therapist, and also individual therapy sessions. Dr. Sutterfield described respondent as an active and responsible participant who did everything requested of her. What most participants require 20 months to complete, she completed in a year. Respondent worked diligently to complete the core program requirements, attended every meeting, completed her homework timely, and was a very good client and role model to others. Based on her history, test results, treatment rating scales, self-report and clinical observations, Dr. Sutterfield opined that respondent is at very low risk to re-offend. He believes that she has assumed responsibility for her actions and is not in denial. He noted that her offense involved no force/coercion, and that there was no subsequent cover-up. Dr. Sutterfield diagnosed her with Dysthymia, characterized by low to mild depression. Her symptoms have lifted as she worked through the embarrassment and humiliation of her arrest. He concluded: "Lidia is not a threat to the community and she feels genuine remorse over her behavior."

10. Respondent was administered a Sexual Adjustment Inventory that was scored on September 27, 2006. She was assessed in the medium risk range on sexual adjustment and child molest scales. She was in the low risk range for sexual assault, incest and exhibitionism. She scored poorly on the truthfulness scales. Her "Test Item truthfulness" scale scored her in the problem risk range at 87 percentile, and on the "sex item truthfulness" scales her score was in the medium risk range at 61 percentile. Contrary to Dr. Sutterfield's assessment, she did attempt to cover-up her action during the early investigation by Stockton Police, and she was not honest with her spouse about her whereabouts that evening. It does appear that respondent was much more guarded and less forthright about her actions in 2006. She has since been open and honest about her conduct, and has worked hard on her rehabilitation.

11. Respondent is a 2004 graduate of Sacramento State University, where she received her bachelor's degree in psychology. She would eventually like to apply to the University of Pacific pharmacy program. Respondent would now like to gain experience and further expand her knowledge of pharmacy as a pharmacy technician. She completed a pharmacy technician program through Abrams College in Modesto. Respondent has worked at Dameron's Linacia Pharmacy in Stockton, California. Sarah P. Moline is the pharmacy manager there and she wrote a November 6, 2008 letter in support of respondent. Ms. Moline was aware of respondent's criminal conviction, and noted that respondent was honest about her record. She also observed that respondent "possesses many traits that enabled her to be a successful pharmacy intern. She is responsible, mature and is able to utilize knowledge and experience. Ms. Guzman is trustworthy and has good customer service skills."

12. Respondent believes that she has benefited from therapy. She has worked through a lot of exercises during her therapy to help gain an understanding of why she did what she did. She knows it was wrong. She believes she now has a better intuition about such things and is able to put a stop to it, before actions lead to further steps. Respondent notes that she is a stronger person as a result of going through counseling and the program supervised by Dr. Sutterfield. She described herself as "emotionally rehabilitated." She recognizes that she was not honest when first questioned by Stockton police. However, she did disclose everything when pressed, and she thereafter cooperated fully with their investigation.

LEGAL CONCLUSIONS

1. Pursuant to 4300, subdivision (c), the Board may "refuse a license to any applicant guilty of unprofessional conduct."

Business and Professions Code section 4301, subdivision (f), defines "unprofessional conduct" to include 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."

2. Business and Professions Code section 4301, subdivision (l), defines "unprofessional conduct" to include the "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.... The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or ... to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter."

3. Pursuant to Business and Professions Code section 480, subdivision (a)(1), the Board may deny a license to an applicant who 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 application is made." Business and Professions Code section 480, subdivision (a)(2), further provides for denial of a license where an applicant has done "any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another;..."

4. In California Code of Regulations, title 16, section 1770, the Board has adopted the following criteria for determining whether a substantial relationship exists:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial 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.

5. The offense for which respondent was convicted is substantially related to the qualifications, functions or duties of a pharmacy technician. (Finding 8.) In *In re Lesansky* (2001) 25 Cal.4th 11 is instructive. The California Supreme Court determined in that case that an attorney could be summarily disbarred as a result of his felony conviction for attempting to commit a form of child molestation because the practice of law requires good moral character, and because the attorney's felony conviction involved moral turpitude and thus demonstrated his unfitness for the legal profession. The court explained that discipline could be imposed "only for criminal conduct having a logical relationship to an attorney's fitness to practice, and that the term 'moral turpitude' must be defined accordingly." (*Id.* at p. 14.) The court found that the attorney's illegal conduct was related to his fitness to practice, reasoning that:

Attorney discipline is imposed when necessary "to protect the public, to promote confidence in the legal system, and to maintain high professional standards" [citations], and the term "moral turpitude" is defined by reference to this purpose. As we have in the past, we acknowledge here that the term "cannot be defined with precision." [Citation.] Nevertheless, we can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]

(*Id.* at p. 16.) In *Lesansky*, the court found that "when the unlawful sexual behavior is committed against a child who is substantially younger than the perpetrator," such conduct "is 'extremely repugnant to accepted moral standards' and necessarily involves moral turpitude for purposes of attorney discipline." (*Id.* at p. 17.)

The court's reasoning in *Lesansky* applies here. The practice of pharmacy requires good moral character. Pharmacy technicians regularly come in contact with members of the public. Respondent's conviction for unlawful sexual intercourse with a minor was contrary to accepted moral standards. Her conviction would likely undermine public confidence in and respect for the practice of pharmacy and pharmacy technicians, and demonstrated unfitness to perform the functions authorized by a pharmacy technician in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1770.) Consequently, respondent's crime is substantially related to the qualifications, functions and

duties of a pharmacy technician. Respondent's conviction for unlawful sexual intercourse with a minor, therefore, establishes cause to deny her application under Business and Professions Code sections 480, subdivision (a)(1); 4300, subdivision (c); and 4301, subdivision (1).

6. Business and Professions Code section 4301, subdivision (f), defines unprofessional conduct to include 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." The conduct underlying respondent's conviction constituted moral turpitude. And respondent engaged in dishonest acts when she initially denied having been with minor when questioned by Stockton Police. Cause was established under Business and Professions Code sections 480, subdivision (a)(2); 4300, subdivision (c); and 4301, subdivision (f), to deny respondent's application.

7. In California Code of Regulations, title 16, section 1769, the Board has set forth the following criteria for rehabilitation when considering the denial of a license:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

8. The matters set forth in Findings 9 through 12 have been considered. Respondent exercised very poor judgment when she entered into an intimate relationship with minor. She knew, or should have known, that it was wrong. When she came to a clear understanding after the May 5 incident that the relationship was both over and wrong, she began the process of rehabilitation. She got off to a poor start. Complainant is concerned that she was not honest with Stockton Police and that she disregarded a direct order not to contact minor. Yet, immediately upon being confronted with her dishonesty respondent cooperated fully with police. Her attitude and approach toward her recovery has been consistent and steady from that point. She resigned from her position. She entered into and completed a comprehensive sex offender program. Dr. Sutterfield noted that she became a role model for other members in her therapy group based upon her honesty. She has expressed genuine remorse over her behavior and Dr. Sutterfield opined that she is

rehabilitated and is not a threat to the community. His opinion on the likelihood (“very low risk”) of re-offense is persuasive.

9 Respondent has shifted her career focus from psychology to pharmacy. She is college-educated, having successfully completed both undergraduate studies in psychology, and a pharmacy technician program. She interned at a Stockton pharmacy and now desires to work full time in this field. Respondent impresses as one who has learned from her past mistake, is remorseful and is anxious and committed to moving forward in a new direction. She has worked hard on her rehabilitation. Though her conviction was in 2008, it related to a 2006 plea and conviction. She poses little if any risk of re-offense. Remaining concerns that the Board may have regarding her rehabilitation can be addressed through standard terms and conditions of probation.

It would therefore not be contrary to the public interest to issue respondent a probationary license at this time.

ORDER

The application of Lidia Arelis-Guzman for the issuance of an intern pharmacy technician registration is denied. However, respondent shall be issued a probationary license, upon satisfaction of the following: Respondent shall first meet all statutory and regulatory requirements for the issuance of a pharmacy technician registration. Following the satisfaction of this condition, respondent’s license shall be issued and immediately revoked, the order of revocation being stayed and respondent placed on probation for a period of four (4) years on the following terms and conditions:

1. Certification Prior to Resuming Work. Respondent shall be suspended from working as a pharmacy technician until she is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Subject to the above restrictions, respondent may continue to own or hold an interest in any entity licensed by the board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. Obey All Laws. Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

3. Reporting to the Board. Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. Interview with the Board. Upon receipt of reasonable notice, respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. Cooperation with Board Staff. Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

6. Notice to Employers. Respondent shall notify all present and prospective employers of the decision in case number 2008090740, and the terms, conditions and restrictions imposed on respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause her employer to report to the Board in writing acknowledging the employer has read the decision in case number 2008090740.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 2008090740 in advance of respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the respondent is considered an employee or independent contractor.

7. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

8. Status of License. Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied

9. Notification of Employment/Mailing Address Change. Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule, if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

10. Tolling of Probation. It is a violation of probation for respondent to work less than the Board required hours per month as a pharmacy technician/exemptee. Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

“Cessation of practice” means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in the Business and Professions Code.

11. Violation of Probation. If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

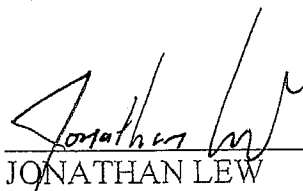
If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

12. Completion of Probation. Upon successful completion of probation, respondent's technician registration will be fully restored.

13. License Surrender While on Probation/Suspension. Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

DATED: February 27, 2009

A handwritten signature in black ink, appearing to read "Jonathan Lew", is written over a horizontal line.

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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7 Attorneys for Complainant

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

11 In the Matter of the First Amended Statement of
Issues Against:

Case No. 3135

12 LIDIA ARELIS-GUZMAN
13 1918 Shameran Street
Stockton, CA 95210

**FIRST AMENDED
STATEMENT OF ISSUES**

14 Pharmacy Technician Registration

15 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this First Amended Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy,
21 Department of Consumer Affairs.

22 2. On or about May 7, 2007, the Board of Pharmacy, Department of
23 Consumer Affairs received an application for a Pharmacy Technician Registration from Lidia
24 Arelis-Guzman (Respondent). On or about May 1, 2007, Lidia Arelis-Guzman certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on August 8, 2007.

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JURISDICTION

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

5 4. Section 4300 subd. (c) provides:

6 "c) The board may refuse a license to any applicant guilty of unprofessional
7 conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a
8 license who is guilty of unprofessional conduct and who has met all other requirements for
9 licensure. The board may issue the license subject to any terms or conditions not contrary to
10 public policy, including, but not limited to, the following:

- 11 (1) Medical or psychiatric evaluation.
- 12 (2) Continuing medical or psychiatric treatment.
- 13 (3) Restriction of type or circumstances of practice.
- 14 (4) Continuing participation in a board-approved rehabilitation program.
- 15 (5) Abstention from the use of alcohol or drugs.
- 16 (6) Random fluid testing for alcohol or drugs.
- 17 (7) Compliance with laws and regulations governing the practice of pharmacy."

18 5. Section 4301 Provides that the Board shall take action against a license holder of a
19 licensee who is guilty of unprofessional conduct which includes in pertinent part the following:

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

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

25 6. Section 4311(c)(4) provides in pertinent part that:

26 "A conviction of any crime referred to in Section 4301, or for violation of Section
27 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to
28 the qualifications, functions, or duties of a licensee of the board."

1 7. Section 480 of the Code states in pertinent part:

2 "(a) A board may deny a license regulated by this code on the grounds that the
3 applicant has one of the following:

4 "(1) Been convicted of a crime. A conviction within the meaning of this section
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
6 which a board is permitted to take following the establishment of a conviction may be taken
7 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
8 or when an order granting probation is made suspending the imposition of sentence, irrespective
9 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

10 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
11 substantially benefit himself or another, or substantially injure another; or

12 "(3) Done any act which if done by a licentiate of the business or profession in
13 question, would be grounds for suspension or revocation of license.

14 "The board may deny a license pursuant to this subdivision only if the crime or act
15 is substantially related to the qualifications, functions or duties of the business or profession for
16 which application is made.

17 CAUSE FOR DENIAL OF APPLICATION

18 (conviction)

19 8. Respondent's application is subject to denial under sections 4300 (c) in
20 conjunction with 4301 (f) and (l), 4311(c)(4), and 480 in that on or about April 16, 2008 in a
21 criminal proceeding entitled *People v. Lidia Guzman* in Superior Court of California, County of
22 San Joaquin, Case Number SM250660A, Respondent was convicted by plea of nolo contendere
23 in Penal Code section 261.5 (Unlawful Sexual Intercourse with a Minor) a misdemeanor. Said
24 crime is substantially related to the practice of a pharmacy technician. The circumstances are as
25 follows:

26 a. On or about May 8, Respondent kissed and molested a 17 year old
27 minor.

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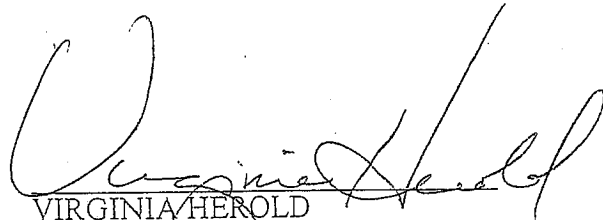
PRAYER

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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. Denying the application of Lidia Arelis-Guzman for registration as a Pharmacy Technician;
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/29/08



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

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