



California State Board of Pharmacy
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

NOV 17 AM 7:31

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Lydia Torres</u>	Case No. <u>AC 4501</u>
Address of Record: <u>PO BOX 5715102</u> <u>Tarzana, CA 91357</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4501, I hereby request to surrender my pharmacy technician license, License No. TCH 57507. The Board or its designee 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Lydia Torres
Applicant's Signature

11-15-16
Date

V. Howell
Executive Officer's Approval

11/28/16
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

LYDIA TORRES,

Pharmacy Technician Registration
No. TCH 57507

Respondent.

Case No. 4501

OAH No. 2014120025

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective at 5:00 p.m. on October 24, 2016.

It is so ORDERED on September 23, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

LYDIA TORRES,

Pharmacy Technician Registration
Number TCH 57507,

Respondent.

Case No. 4501

OAH No. 2014120025

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on July 28, 2016, in Los Angeles, California.

Michael A. Cacciotti, Deputy Attorney General, Department of Justice, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Lydia Torres (Respondent) appeared on her own behalf and was present throughout the disciplinary proceeding.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 4, 2014, Complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, signed the Accusation in her official capacity.

The accusation alleges that Respondent, a registered pharmacy technician, was twice convicted of driving with a blood alcohol content greater than 0.08 percent, and once convicted of leaving the scene of an accident where there was property damage; that she was guilty of unprofessional conduct as a result of her use of alcohol in a manner that was dangerous to herself or others; that she had sustained more than one misdemeanor conviction

involving the use of alcohol; that she was guilty of committing acts of moral turpitude, and that she violated the Pharmacy Act.

The Pharmacy Technician Registration

2. No person shall act as a pharmacy technician without first being registered with the Board as a pharmacy technician (Bus. & Prof. Code, § 4202, subd. (e).) An applicant for a pharmacy technician registration must establish that he or she either (1) holds an associate of arts degree in pharmacy technology, or (2) has completed a specified course of training, or (3) has graduated from an approved or recognized school of pharmacy, or (4) has been certified by the Pharmacy Technician Certification Board (PTCB). (Bus. & Prof. Code, § 4202.) No examination is required to obtain a pharmacy technician registration, although an examination is required to obtain certification from the PTCB.

Duties of a Pharmacy Technician

3. A "pharmacy technician" assists a pharmacist in the performance of pharmacy related duties. (Bus. & Prof. Code, § 4938.) Under the direct supervision and control of a pharmacist, a pharmacy technician is authorized to perform packaging, manipulative, repetitive and other non-discretionary tasks related to the processing of prescriptions in a licensed pharmacy. (Bus. & Prof. Code, § 4115; Cal. Admin. Code, tit. 16, § 1793.)

Respondent's License History

4. On October 21, 2004, the Board issued Pharmacy Technician Registration number TCH 57507 to Respondent. That registration has been renewed through October 31, 2016.

5. On June 8, 2010, the Board issued Respondent a Letter of Admonishment for unprofessional conduct based on her use of alcohol in a dangerous manner and for her conviction of a crime that is substantially related to the functions, duties and qualifications of a pharmacy technician. Respondent contends she never received the admonishment. There is no other history of administrative discipline.

The February 23, 2007, Conviction

6. On February 23, 2007, Respondent was convicted on her plea of nolo contendere of violating Vehicle Code section 20002, subdivision (a) (hit and run, involving property damage only), a misdemeanor, in the Superior Court of California, County of Los Angeles in case number 1MT02309. The court suspended imposition of sentence and placed Respondent on summary probation for 36 months and ordered her to pay a fine of \$300 or serve 10 days in the County Jail, less credit for two days served. The court also permitted her the of option, which Respondent accepted, of performing 10 days of community service with CalTrans, in lieu of either fine or jail.

Circumstances of the Offense

7. The facts and circumstances of the crime are that on January 31, 2001, Respondent was involved in a minor automobile collision at a gas station. Respondent left the scene and later a bench warrant was issued for her arrest. The warrant was not acted upon until 2007 when Respondent was stopped by police on an unrelated matter and the six-year old warrant was discovered.

The March 19, 2007, Conviction

8. On March 19, 2007, Respondent was convicted on her plea of guilty¹ of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or higher), a misdemeanor, in the Superior Court of California, County of Los Angeles in case number 7VY01200. Prior to her sentencing, Respondent admitted that she had been convicted of the same offense on February 9, 2000, in the Hollywood Courthouse Judicial District in case number 9YH00464. The court suspended imposition of sentence and placed Respondent on summary probation for 48 months on condition that she serve 96 hours in the County Jail, that she pay fines, fees and restitution in the total sum of \$2,154, that she enroll in and complete an 18-month licensed second offender drug and alcohol program, and that she attend 26 Alcoholics Anonymous/Narcotics Anonymous meetings a the rate of twice per week.

Circumstances of the Offense

9. At 12:30 a.m. on the morning of March 18, 2007, Respondent was observed by a police officer to be driving a car that had a large crack down the middle of the windshield, a violation of Vehicle Code section 26701, subdivision (a). The officer initiated a traffic stop and spoke with Respondent. The officer observed that Respondent showed obvious signs of intoxication including slurred speech, bloodshot watery eyes and a strong odor of alcohol emanating from her. The officer administered standard field sobriety tests to Respondent, which she failed. A breathalyzer test showed Respondent's BAC to be 0.21 percent. A subsequent blood draw taken from Respondent at the police station confirmed the same BAC reading.

The March 20, 2012, Conviction

10. On March 20, 2012, Respondent was convicted on her plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or higher), a misdemeanor, in the Superior Court of California, County of Los Angeles in case number 7VY0120. The court suspended imposition of sentence and placed

¹ Respondent's plea of guilty of violating Vehicle Code section 23152 subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), conclusively established the conviction, but her plea to that offense did not preclude her from introducing evidence in explanation, mitigation and rehabilitation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Respondent on summary probation for five years on condition that she serve 10 days in the County Jail, with credit for one day served, that she pay fines and fees totaling \$2,597, and that she enroll in and complete an 18-month alcohol offender program. The court permitted Respondent to perform 16 days of community service in lieu of the fine. On October 8, 2015, Respondent provided proof to the court that she had paid the fines and completed the community service. Respondent completed the 18-month program in 2014 however, the exact date of completion could not be determined because the date was obliterated by the three-hole punch used in the preparation of Complainant's exhibit book. (Part of Exhibit 6.)

Circumstances of the Offence

11. In the early morning hours of February 6, 2012, Respondent was pulled over by a Highway Patrol officer on the I-5 freeway for speeding. Radar used by the officer's partner showed that Respondent was traveling at 86 miles per hour. The officer approached the driver's side window which Respondent had opened and immediately detected the odor of alcohol. Respondent said she believed she was traveling at 60 miles per hour. The officer administered, and Respondent failed, several field sobriety tests. Respondent's BAC was measured as 0.17.

Respondent's Testimony

12. When young, Respondent did not drink and used to be a "designated driver" for her friends. She began drinking with her family at parties. She had been a "comprehensive perinatal healthcare worker" but never gave much thought to the consequences of her drinking in relationship to her employment.

13. According to Respondent, her last conviction was a "rude awakener like a slap in the face." However, rather than stop drinking she hired a private driver to transport her when she drinks, or she would take public transportation. Respondent was extremely remorseful for her conduct and stated she was glad she had been pulled over "because [she] could have killed someone."

14. Respondent has Stage Two cancer and is on chemotherapy. She has had very little to drink since she started this therapy because "alcohol does not taste very good anymore." Her boyfriend is delighted that Respondent has reduced her consumption to very minimal amounts.

15. Respondent is currently living on her State Disability Insurance. She had worked as a pharmacy technician at different Rite Aide locations over the past 10 years. She was quite adamant that she never drank before she went to work. Her pharmacy manager knows she attended this hearing. She attends AA meetings twice monthly but does not have a sponsor.

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Disciplinary Guidelines

16. The Board enacted comprehensive disciplinary guidelines. The Board recognizes that individual cases may necessitate a departure from the guidelines; in such cases, the mitigating circumstances should be detailed, especially where a Category III violation is involved.

With regard to a pharmacy technician, the guidelines provide:

The Board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The Board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol

If revocation is not imposed, the Board recommends a minimum Category III level of discipline be imposed on the pharmacy technician. This would include suspension and probation.

In addition, a pharmacy technician would be required to obtain certification as defined by Business and Professions Code section 4202(a)(4) prior to resuming work as a pharmacy technician. The Board believes that certification prior to resuming work is always warranted in cases where a pharmacy technician license is disciplined but not revoked.

Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist. To place a pharmacy technician on probation places an additional burden on the pharmacist (who may or may not be on probation) to

ensure that the Respondent pharmacy technician complies with the terms and conditions of his or her probation.

The guidelines also state in part:

A minimum three-year probation period has been established . . . as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the Board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation. A suspension period may also be required as part of the probation order. The Board prefers that any stayed order be for revocation rather than for some period of suspension.

Probation conditions are divided into two categories: (1) standard conditions that shall appear in all probation cases, and (2) optional conditions that depend on the nature and circumstances of a particular case. These conditions may vary depending on the nature of the offense(s).

The Board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.

The guidelines recommend the following factors be considered to determine the penalty to be imposed: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record; prior warnings including letters of admonishment; number and variety of current violations; the nature and severity of the crimes under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; compliance with terms of any criminal sentence and probation; overall criminal record; evidence of proceedings to set aside and dismiss the criminal case; the time passed since the offenses; whether the conduct was intentional or negligent, demonstrated incompetence, or, if the Respondent is being held to account for conduct committed by another, the Respondent had knowledge of or knowingly participated in such conduct; and any financial benefit to the Respondent. A Respondent is permitted to present mitigating circumstances and has the burden of demonstrating any rehabilitative or corrective measures he or she has taken. Recent dated statements and letters should be provided to reflect a Respondent's conduct and current situation.

The Appropriate Measure of Discipline

17. Respondent's last conviction is more than four years old. Respondent has resolved her problem with alcohol not by abstention but by hiring a driver or taking public transportation. Her drinking has significantly diminished since she began her chemotherapy.

18. The disciplinary recommendation set forth below is sufficient to protect the public. The evidence of rehabilitation and the need for public protection are not in conflict, and an outright revocation of Respondent's registration is not required to protect the public.²

19. Probation shall be imposed for a period of five years. Terms and conditions of probation shall include a requirement that Respondent obtain certification before resuming work, that she obey all laws, report to the Board as required, notify all employers of her probationary status, reimburse the Board for some its costs of enforcement, pay probation monitoring costs, abstain from the use of unauthorized drugs and alcohol, attend a substance abuse recovery and relapse prevention support group, and submit to random drug screening. Terms of probation shall also require that Respondent's registration be suspended for a year. During the period of suspension, Respondent shall obtain the education necessary to establish her current competency as a pharmacy technician and she shall take and pass the PTCB certification examination. If she does not pass the examination within the first year of probation, the order staying the revocation shall be dissolved and an outright revocation of the registration shall be imposed.

As a condition of probation, and after serving the period of suspension, probation shall require Respondent to be employed as a registered pharmacy technician for at least 20 hours per month. It is concluded that an individual who is on probation must work at least 20 hours a month to ensure a requisite level of monitoring and to ensure the experience and ongoing training necessary to protect the public. Whether Respondent wants to maintain this level of employment during the period she is on probation or whether she will surrender her registration because of personal conflicts that such a commitment requires is a decision that rests solely with Respondent. It is not the Board's decision.

Costs of Investigation and Enforcement

20. A declaration of the deputy attorney general who prosecuted this matter was submitted to support a claim of enforcement costs of approximately \$13,840 (Exhibit 3). No objection was made to the cost declaration or to its contents. The disciplinary matter took about a half day to try to conclusion. Under other circumstances, the amount of cost recovery requested would be deemed disproportionate to the time required for the trial of this matter. That apparent anomaly is explained by a comprehensive review of Exhibit 3. Apparently, a negotiated resolution of this matter was reached between the parties, but the Board non-adopted the stipulated resolution and sent the matter back for trial. Respondent

² Business and Professions Code section 4313 provides:

In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the Board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

should not bear Complainant's costs incurred in trying to settle this matter, a settlement which would have benefitted both parties. According to Exhibit 3, the Deputy Attorney General spent 27.25 hours dealing with the settlement and billed this time to his client at the rate of \$170 per hour for a total of \$4,632.50. Subtracting this amount from the total costs claimed leaves a balance of \$9,187.50, which is reasonable. However, that does not end the cost inquiry. It is just the starting point.

21. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal. App. 4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board in imposing costs in such situations must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised colorable claim. **The Board must consider the licensee's ability to make payment.** Finally, the Board ". . . may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Id.*, footnote omitted.) (Emphasis added.)

22. The most important of the *Zuckerman* criteria, at least so far as this matter is concerned, is Respondent's ability to make payment. Respondent is currently unemployed and is living off her State Disability Insurance. It would be unduly punitive to require Respondent to pay any cost recovery.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The education and training required to hold a pharmacy technician registration are set forth in Factual Finding 2. The duties of a registered pharmacy technician are set forth in Factual Finding 3.

The Board's disciplinary guidelines observe that pharmacy technicians are issued a license based on minimal education, training requirements or certification, and that no examination is required for issuance of the registration. The Board's guidelines note that pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

2. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. The sharp

distinction between professional licenses and nonprofessional licenses supports the distinction in the standards of proof. Because a professional license represents the fulfillment of extensive educational, training and testing requirements, a licensee has an extremely strong interest in retaining the license that he or she has expended so much effort to obtain. The same cannot be said for a licensee's interest in retaining a nonprofessional license even though an applicant for an occupational (as opposed to a professional) license is required complete certain coursework and pass an examination. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453-454.)

3. The phrase "preponderance of evidence" is usually defined in terms of probability of truth, e.g., "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth" and "more likely true than not true." Otherwise stated, a preponderance calls for probability, while clear and convincing proof demands a high probability. (*Utility Consumers' Action Network v. Public Utilities Commission of the State of California* (2010) 187 Cal.App.4th 688, 698-699.)

4. Complainant has the burden of proving the charging allegations by a preponderance of the evidence. The preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional/occupational license. However, the application of the preponderance of the evidence standard is not critical to the outcome in this matter because the same conclusions would be reached even if the clear and convincing evidence standard were applied.

Applicable Disciplinary Statutes and Regulations

5. Business and Professions Code section 490 provides in part:

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

6. Business and Professions Code section 493 provides in part:

Notwithstanding any other provision of law, in a proceeding . . . to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that . . . the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and 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 substantially related to the qualifications, functions, and duties of the licensee in question

7. Business and Professions Code section 4202, subdivision (d) provides:

The Board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.

8. Business and Professions Code section 4301 provides in part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not 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) The . . . use . . . of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. [¶] . . . [¶]

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

(k) The conviction of more than one misdemeanor . . . involving the use . . . of any . . . alcoholic beverage . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction . . . of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct . . . [¶] . . . [¶]

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

9. California Code of Regulations, title 16, section 1770 provides:

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.

Use of the DUI Convictions – Substantial Relationship

10. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, a physician sustained two alcohol-related driving convictions. The physician's license was disciplined under Business and Professions Code section 2239 (which provided that two or more alcohol related convictions constituted unprofessional conduct). On appeal, the appellate court found a logical connection (i.e., a substantial relationship) between the alcohol-related convictions and the physician's fitness to practice medicine. The appellate court wrote:

Driving while under the influence of alcohol . . . shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society . . . Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession . . . Repeated convictions involving alcohol use, two of which violated Griffiths' probation, reflect poorly on Griffiths' common sense and professional judgment, which are essential to the practice of medicine, and tend to undermine public confidence in and respect for the medical profession." *Id.*, at pp. 770-771.

The same reasoning applies with regard to Respondent's two driving under the influence of alcohol convictions. The convictions, and each of them, are substantially related to the qualifications, functions and duties of a registered pharmacist technician.

Rehabilitation

11. California Code of Regulations, title 16, section 1769 provides in part:

[¶] . . . [¶]

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

12. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

13. Remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

14. When considering an individual's rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The requisite length of time required to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

15. Respondent fully acknowledged the wrongfulness of her past misconduct. She expressed remorse. She took immediate and effective steps following her second driving under the influence arrest to protect the public against her abuse of alcohol. She has not consumed alcoholic beverages prior to going to work. She has significantly curtailed her use of alcohol.

It is concluded that Respondent has shown meaningful and sustained rehabilitation sufficient to permit her to retain her registration on a probationary basis.

Cause Exists to Impose Administrative Discipline

16. First Cause for Discipline: Cause exists to revoke Respondent's registration as a pharmacy technician under Business and Professions Code sections 490 and 4301, subdivision (l). A preponderance of the evidence established that on March 19, 2007, and again on March 20, 2012, Respondent was convicted of driving with an excessive blood alcohol level, convictions that are substantially related to the qualifications, functions and duties of a registered pharmacy technician. On February 23, 2007, Respondent was convicted of hit and run/property damage, a crime which is also substantially related to the functions, duties and qualifications of a registered pharmacy technician.

17. Second Cause for Discipline: Cause exists to revoke Respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (h). A preponderance of the evidence established that on March 19, 2007, and again on March 20, 2012, Respondent engaged in unprofessional conduct in that she consumed an alcoholic beverage to the extent she was a danger to herself and others.

18. Third Cause for Discipline: Cause exists to revoke Respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (k). A preponderance of the evidence established that Respondent was convicted of driving under the influence of alcohol on October 4, 2007 and of driving under the influence of alcohol and driving with an excessive level of alcohol in her system on September 7, 2011.

19. Fifth Cause for Discipline:³ Cause exists to revoke Respondent's registration as a pharmacy technician under Business and Professions Code sections 490 and 4301, subdivision (f). A preponderance of the evidence established that on March 19, 2007, and again on March 20, 2012, Respondent was convicted of driving with an excessive blood alcohol level, convictions that are substantially related to the qualifications, functions and duties of a registered pharmacy technician. On February 23, 2007, Respondent was convicted of hit and run/property damage, a crime which is also substantially related to the functions, duties and qualifications of a registered pharmacy technician. All three convictions involved acts of moral turpitude.

20. Sixth Cause for Discipline: Fifth Cause for Discipline: Cause exists to revoke Respondent's registration as a pharmacy technician under Business and Professions Code sections 490 and 4301, subdivision (o). A preponderance of the evidence established that on March 19, 2007, and again on March 20, 2012, Respondent was convicted of driving with an excessive blood alcohol level, convictions that are substantially related to the qualifications, functions and duties of a registered pharmacy technician. On February 23, 2007, Respondent was convicted of hit and run/property damage, a crime which is also substantially related to the functions, duties and qualifications of a registered pharmacy technician. All three convictions violate the Pharmacy Act.

³ The Accusation, part of Exhibit 1, does not reference a Fourth Cause for Discipline.

The Appropriate Measure of Discipline

21. Cause exists to impose a Category III sanction that includes a revocation, stayed, with appropriate terms and conditions of probation is appropriate under all the circumstances, as outlined in Factual Findings 17 through 19. This measure of discipline is consistent with the Board's disciplinary guidelines.

Recovery of Costs of Enforcement

22. Business and Professions Code section 125.3 provides in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the Board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

23. Cause exists under Business and Professions Code section 125.3, cause exists to find that the Board reasonably incurred costs in the investigation and prosecution of this matter in sum of \$9,187.50 by reason of Finding 20. However, by reason of Findings 21 and 22, Respondent shall not be required to pay those costs.

ORDER

Pharmacy Technician Registration Number TCH 57507 issued to Respondent Lydia Torres is revoked; however, the revocation is stayed and Respondent is placed on probation for five years on the following terms and conditions.

1. Suspension

As part of probation, Respondent shall be suspended from working as a pharmacy technician for a period of one year. The suspension shall commence on the effective date of this decision. During the period of suspension, Respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other

location where dangerous drugs and devices or controlled substances are maintained except as may be required to obtain certification as a registered pharmacy technician. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the Board except as may be necessary to obtain certification as a registered pharmacy technician. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances except as may be necessary to obtain certification as a registered pharmacy technician. Respondent shall not direct, control or perform any aspect of the practice of pharmacy while she is on probation. Respondent shall not own or hold an interest in any licensed premises while she is on probation.

During the period of suspension, Respondent shall obtain the education and training necessary to reestablish her competence and qualification for registration as a pharmacy technician by meeting any one of the following requirements: (1) obtain an associate's degree in pharmacy technology; complete a course of training specified by the Board; (3) graduate from a school of pharmacy recognized by the Board; or (4) pass an examination and becomes certified by the Pharmacy Technician Certification Board.

Respondent's failure to obtain certification or to otherwise comply with this order of suspension shall constitute a violation of probation and provides the Board with grounds to dissolve the order staying the order of revocation and impose an outright revocation Respondent's registration.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime, whether state or federal;
- the filing of any action for discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Respondent's failure to timely report any such occurrence constitutes a violation of probation.

3. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period of delinquency in the submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of this Decision in Case Number 4359 and of all the terms, conditions and restrictions imposed on Respondent by this Decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Board Decision in Case Number 4359 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Board's Decision in Case Number 4359 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the Board's Decision in Case Number 4359 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"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 or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the Respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

Respondent shall not be required to reimburse the Board its costs of investigation and prosecution of this matter.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period of suspension and during any period in which probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If Respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof

due to tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee 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. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board.

Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) 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.

11. Notification of Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 20 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of

work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which Respondent is not working for at least 20 hours per month as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing shall be determined by the Board or its designee. Respondent shall fully cooperate with the Board or its designee at all times and shall, when directed, submit to such tests and samples

for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Respondent's failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Respondent's failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of Respondent from employment as a registered pharmacy technician. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, Respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location 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 assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

16. Work Site Monitor

Within ten (10) days of her obtaining any employment, Respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising Respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that Respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed.

Should Respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

17. Notification of Departure

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

18. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented bona fide medical treatment. Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if Respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

19. Tolling of Suspension

During the period of suspension, Respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days Respondent is absent from California. During any such period of tolling of suspension, Respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the Board in writing within ten (10) days of departure, and must further notify the Board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, Respondent shall not return to work until notified by the Board that the period of suspension has been satisfactorily completed.

20. Violation of Probation

If a 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

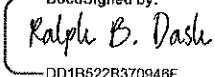
action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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 that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. 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 automatically extended until the petition to revoke probation or accusation is heard and decided.

21. **Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

Date: August 18, 2016

DocuSigned by:

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RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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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:
12 **LYDIA TORRES**
13 P.O. Box 372114
Reseda, CA 91337
14 Pharmacy Technician Registration No. TCH 57507
15 Respondent.

Case No. 4501

ACCUSATION

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.

1 STATUTORY PROVISIONS

2 4. Section 490 states:

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

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

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

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

19 6. Section 4300.1 states:

20 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 operation of law or by order or decision of the board or a court of law, the placement of a license
22 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
23 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
24 proceeding against, the licensee or to render a decision suspending or revoking the license."

25 7. Section 4301 states, in pertinent part:

26 "The board shall take action against any holder of a license who is guilty of unprofessional
27 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

28 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)**

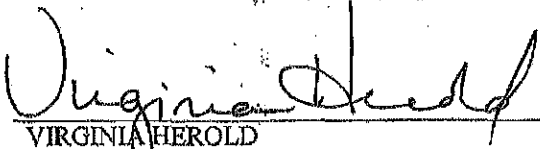
5 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (o), on the grounds of unprofessional conduct, in that Respondent was convicted of
7 crimes and committed acts that violated the Pharmacy Act. Complainant refers to, and by this
8 reference incorporates, the 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


20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

23 LA2012508293
24 51396757.doc