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

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

Case No. 4758
**DEFAULT DECISION
AND ORDER**
[Gov. Code, §11520]

FINDINGS OF FACT

1. On November 4, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4758 against Lydia Delia Reyes (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On October 27, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 72680 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4758 and will expire on April 30, 2014, unless renewed.
3. On November 21, 2013, Respondent was served by Certified and First Class Mail copies of Accusation No. 4758, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)

1 at Respondent's address of record which, pursuant to Business and Professions Code section
2 4100, is required to be reported and maintained with the Board. Respondent's address of record
3 was and is 6846 Farrier Avenue, Riverside, CA 92507.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

6 5. On December 2, 2013, the aforementioned documents were returned by the U.S.
7 Postal Service marked "Return to Sender, Unable to Forward." The address on the documents
8 was the same as the address on file with the Board. Respondent failed to maintain an updated
9 address with the Board and the Board has made attempts to serve the Respondent at the address
10 on file. Respondent has not made herself available for service and therefore, has not availed
11 herself of her right to file a notice of defense and appear at hearing.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the
14 respondent files a notice of defense, and the notice shall be deemed a specific
15 denial of all parts of the accusation not expressly admitted. Failure to file a notice
16 of defense shall constitute a waiver of respondent's right to a hearing, but the
17 agency in its discretion may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon
19 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
20 No. 4758.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at
23 the hearing, the agency may take action based upon the respondent's express
24 admissions or upon other evidence and affidavits may be used as evidence
25 without any notice to respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4758, finds that

1 the charges and allegations in Accusation No. 4758, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for
5 Investigation and Enforcement is \$890.00 as of March 7, 2014.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Lydia Delia Reyes has
8 subjected her Pharmacy Technician Registration No. TCH 72680 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
11 Technician Registration based upon the following violations alleged in the Accusation which are
12 supported by the evidence contained in the Default Decision Evidence Packet in this case.

13 a. Respondent has subjected her pharmacy technician registration to
14 discipline under Code sections 490 and 4301, subdivision (l), in that on November 16, 2010, in a
15 criminal proceeding entitled *The People of the State of California v. Lydia Delia Carillo Reyes*,
16 in the Riverside County Superior Court, Moreno Valley Courthouse, case number
17 RIM10009271, Respondent was convicted on her plea of guilty to violating VC 23152,
18 subdivisions (a), driving under the influence and (b), driving with a blood alcohol concentration
19 of 0.08 percent or more, misdemeanors that are substantially related to the qualifications,
20 functions, and duties of a registered pharmacy technician.

21 b. Respondent subjected her pharmacy technician registration to discipline
22 under Code section 4301, subdivision (h) in that on January 12, 2010, and February 4, 2013, she
23 used alcohol to the extent and in a manner that was dangerous and injurious to herself and to the
24 public.

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ORDER

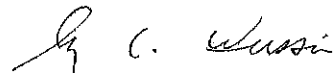
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 72680, heretofore issued to Respondent Lydia Delia Reyes, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 12, 2014.

It is so ORDERED ON April 11, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

70837665.DOC
DOJ Matter ID:SD2013705519

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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3 LINDA K. SCHNEIDER
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4758

12 **LYDIA DELIA REYES**
13 **6846 Farrier Avenue**
Riverside, CA 92507

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH 72680**

Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On October 27, 2006, the Board of Pharmacy issued Pharmacy Technician
21 Registration Number TCH 72680 to Lydia Delia Reyes (Respondent). Respondent has also been
22 known as Lydia Delia Carillo Reyes. The Pharmacy Technician Registration was in full force
23 and effect at all times relevant to the charges brought herein and will expire on April 30, 2014,
24 unless renewed.

25 **JURISDICTION**

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

1 9. Section 4301 of the Code states:

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

5

6 (h) The administering to oneself, of any controlled substance, or the use of
7 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
8 dangerous or injurious to oneself, to a person holding a license under this chapter,
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.

9

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

22

23 **REGULATORY PROVISIONS**

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

25

26 (b) When considering the suspension or revocation of a facility or a
27 personal license on the ground that the licensee or the registrant has been
28 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:

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- (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.

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

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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

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

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

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

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

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

9 **SECOND CAUSE FOR DISCIPLINE**

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

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

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

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

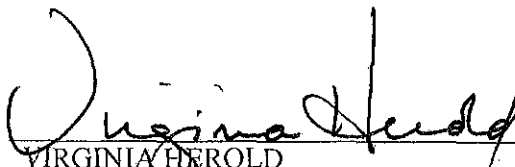
1 violation of Vehicle Code (VC) sections 23152, subdivision (a), driving under the influence
2 (DUI) of alcohol, and 14601.2, driving when privilege was suspended for a prior DUI conviction,
3 misdemeanors. Respondent was also alleged to have a prior conviction within ten years of the
4 commission of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

10 **PRAYER**

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

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

22 DATED: 11/4/13


23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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