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

In the Matter of the Accusation Against:

DESIREE JESSICA REYES
36934 Atka Ct.
Palmdale, CA 93552
Pharmacy Technician Registration No. TCH
108082

Respondent.

Case No. 5091

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 11, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5091 against Desiree Jessica Reyes (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 10, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 108082 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5091 and expired on November 30, 2014. This lapse in licensure, however, pursuant to Business and

1 Professions Code section 118(b) does not deprive the [Board] of its authority to institute or
2 continue this disciplinary proceeding.

3 3. On or about November 17, 2014, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 5091, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 36934 Atka Ct. Palmdale, CA 93552.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about November 24, 2014, the U.S. Postal Service "Certified Return Mail
13 Receipt was received indicating that the aforementioned documents has been signed for and
14 received.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
20 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5091.

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 the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 5091, finds that
2 the charges and allegations in Accusation No. 5091, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$7,523.50 as of May 28, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Desiree Jessica Reyes has
9 subjected her Pharmacy Technician Registration No. TCH 108082 to discipline.

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

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

14 a. Respondent is in violation of sections 4301, subdivision (l) and 490, in conjunction
15 with California Code of Regulations, title 16, section 1770, in that Respondent has been convicted
16 of a crime substantially related to the qualifications, functions or duties of a pharmacy technician,
17 on two separate occasions.

18 b. Respondent is in violation of section 4301, subdivision (h), for using used alcoholic
19 beverages to an extent or in a manner dangerous or injurious to herself and others.

20 c. Respondent is in violation of section 4301, subdivision (j), as defined in section 4059,
21 subdivision (a) and 4060, in that from on or about June 25, 2012 to on or about October 12, 2012,
22 while working as a pharmacy technician, she admitted to stealing controlled substances and
23 dangerous drugs from her employer.

24 d. Respondent is in violation of section 4301, subdivision (g), in that from on or about
25 June 25, 2012 to on or about October 12, 2012, while working as a pharmacy technician she
26 admitted to writing and dispensing fraudulent prescriptions for controlled substances and
27 dangerous drugs.

1 e. Respondent is in violation of section 4301, subdivision (f), in that from on or about
2 June 25, 2012 to on or about October 12, 2012, while working as a pharmacy technician she
3 committed dishonest acts.

4
5
6 ORDER

7 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 108082, heretofore
8 issued to Respondent Desiree Jessica Reyes, is revoked.

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

13 This Decision shall become effective on July 17, 2015.

14 It is so ORDERED June 17, 2015.

15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18 

19
20 By _____

21 AMARYLIS GUTIERREZ
22 Board President

23 51789562.DOC
DOJ Matter ID: LA2014511078

24 Attachment:
25 Exhibit A: Accusation

Exhibit A

Accusation

(DESIREE JESSICA REYES)

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MICHELLE MCCARRON
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804

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:

Case No. 5091

12 **DESIREE JESSICA REYES**
13 **a.k.a, DESIREE JESSICA BRIONES**
14 36934 Atka Ct.
Palmdale, CA 93552

A C C U S A T I O N

15 Pharmacy Technician Registration
16 No. TCH 108082

17 Respondent.

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.

22 2. On or about March 10, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 108082 to Desiree Jessica Reyes, also known as Desiree
24 Jessica Briones (Respondent). The Pharmacy Technician Registration was in full force and effect
25 at all times relevant to the charges brought herein and will expire on November 30, 2014, unless
26 renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 490 states, in pertinent part:

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

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

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

20 5. Section 493 states:

21 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
22 the department pursuant to law to deny an application for a license or to suspend or revoke a
23 license or otherwise take disciplinary action against a person who holds a license, upon the
24 ground that the applicant or the licensee has been convicted of a crime substantially related to the
25 qualifications, functions, and duties of the licensee in question, the record of conviction of the
26 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
27 and the board may inquire into the circumstances surrounding the commission of the crime in
28 order to fix the degree of discipline or to determine if the conviction is substantially related to the

1 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
2 includes "certificate," "permit," "authority," and "registration."

3 6. Section 4059, subdivision (a) states, in pertinent part:

4 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
5 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
7 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
8 Section 3640.7."

9 7. Section 4060 provides in pertinent part, that no person shall possess any controlled
10 substance, except that furnished to a person upon the prescription of a physician, dentist,
11 podiatrist, optometrist, veterinarian, or other authorized prescriber.

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

14 9. Section 4300.1 states:

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

20 10. Section 4301 states:

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

24

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

28

1 “(g) Knowingly making or signing any certificate or other document that falsely
2 represents the existence or nonexistence of a state of facts.

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

8

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

11

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

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 **COST RECOVERY**

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

14 13. **CONTROLLED SUBSTANCES**

15 a. "Fastin," is the brand name for Phentermine. It is a Schedule IV controlled substance
16 as designated by Health and Safety Code section 11057, subdivision (f)(4) and is categorized as a
17 dangerous drug pursuant to section 4022.

18 b. "Vicodin ES," is the brand name for Hydrocodone/Acetaminophen 7.5/750mg. It is a
19 Schedule III controlled substance as designated by Health and Safety Code section 11056,
20 subdivision (e)(4) and is categorized as a dangerous drug pursuant to section 4022.

21 c. "Soma," is the brand name for Carisoprodol 350mg. It is a Schedule IV controlled
22 substance as designated by Title 21 Code of Federal Regulations Part 1308 Section 14 (c)(5) and
23 is categorized as a dangerous drug pursuant to section 4022.

24 d. "Xanax," is the brand name for Alprazolam 1mg. and 2mg., an anti-anxiety
25 benzodiazepine. It is a Schedule IV controlled substance as designated by Health and Safety
26 Code section 11057, subdivision (d)(1) and is categorized as a dangerous drug pursuant to section
27 4022.

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1	08/21/12	08/21/12	6622858	90	Cyclobenzapirne 10mg.	TCH Briones
2						
3						
4	08/21/12	09/18/12	6622858	90	Cyclobenzapirne 10mg.	TCH Briones
5						
6	08/21/12	09/18/12	4401873	60	Alprazolam 2mg.	TCH Briones
7	08/21/12	09/18/12	4401873	60	Alprazolam 2mg.	TCH Briones
8	08/06/12	09/30/12	4401930	100	Hydrocodone/ APAP 7.5/750mg.	Mr. Reyes
9						
10	08/06/12	09/30/12	4401932	90	Carisoprodol 350mg.	Mr. Reyes
11	08/06/12	09/30/12	4401931	90	Alprazolam 1mg.	Mr. Reyes
12	08/15/12	unavailable	4401276	30	Phentermine 37.5mg.	TCH Briones
13	Unavailable	unavailable	4401274	20	Hydrocodone/ APAP 5/325mg.	TCH Briones
14						
15	09/26/12	unavailable	4401929	90	Carisoprodol 350mg.	Mr. Reyes

16 18. During an interview with Respondent, she indicated that she had been employed as a
17 pharmacy technician at since about December 2011 and went on maternity leave from April 2012
18 to June 25, 2012. Respondent admitted that she earned a large sum of money for selling the
19 stolen medications. She identified Anthony Reyes, as her live in boyfriend. Respondent admitted
20 that she started to forge prescriptions after she came back from maternity leave. She further
21 admitted that she destroyed the hard copies for the fraudulent prescriptions and that no pharmacist
22 verified the prescriptions. Respondent admitted that she falsely loaded gift cards with
23 prescription rewards and redeemed them for Target merchandise. She further stated that the total
24 amount of the loss to Target was \$921.00.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 19. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or
6 duties of a pharmacy technician, as follows:

7 a. On or about December 12, 2013, after pleading nolo contendere, Respondent was
8 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
9 [driving while having 0.08% or more, by weight, of alcohol in her blood] in the criminal
10 proceeding entitled *The People of the State of California v. Desiree Jessica Reyes* (Super. Ct. Los
11 Angeles County, 2013, No. 3AV07342). The Court placed Respondent on 36 months probation,
12 with terms and conditions. The circumstances surrounding the conviction are that on or about
13 November 3, 2013, during a traffic enforcement stop, by the California Highway Patrol,
14 Respondent was contacted. While speaking to Respondent, the officer detected an odor of an
15 alcoholic beverage emitting from within the vehicle, her breath, and person. She was observed to
16 have red watery eyes. When asked if she had consumed an alcoholic beverage, Respondent
17 stated, "I had one." Respondent failed to perform the field sobriety tests (F.S.T.'s), as
18 demonstrated and explained by the officer. During the booking procedure, Respondent submitted
19 to a breath test that resulted in a breath-alcohol content level of 0.10% on the first reading and
20 0.09% on the second reading.

21 b. On or about November 4, 2013, after pleading nolo contendere, Respondent was
22 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty
23 theft] in the criminal proceeding entitled *The People of the State of California v. Desiree Jessica*
24 *Briones* (Super. Ct. Los Angeles County, 2013, No. 3AV01727). The Court sentenced
25 Respondent to serve 2 days in Los Angeles County Jail and placed her on 3 years probation, with
26 terms and conditions. The circumstances surrounding the conviction are that on or about
27 September 16, 2012, Respondent stole, took, and carried away the personal property of another,

28 ///

1 to wit: Target. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraphs 15 through 18 inclusive, as though set forth fully.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Alcohol)**

5 20. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
6 that on or about November 3, 2013, Respondent used alcoholic beverages to an extent or in a
7 manner dangerous or injurious to herself, another person or the public, when she drove a vehicle
8 while having approximately 0.10% of alcohol, in her blood. Complainant refers to, and by this
9 reference incorporates, the allegations set forth above in paragraph 19, subparagraph (a), as
10 though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Furnishing Controlled Substances and Dangerous Drugs Without a Prescription)**

13 21. Respondent is subject to disciplinary action under section 4301, subdivision (j), as
14 defined in section 4059, subdivision (a) and 4060, in that from on or about June 25, 2012 to on or
15 about October 12, 2012, while working as a pharmacy technician at Target, Respondent, by her
16 own admission, stole controlled substances and dangerous drugs from her employer, which she
17 sold for monetary gain. Complainant refers to, and by this reference incorporates, the allegations
18 set forth above in paragraphs 15 through 18 inclusive, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Prescription Forgery)**

21 22. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
22 that from on or about June 25, 2012 to on or about October 12, 2012, while working as a
23 pharmacy technician at Target, Respondent, by her own admission, wrote and dispensed
24 fraudulent prescriptions for controlled substances and dangerous drugs, which she sold for
25 monetary gain. Complainant refers to, and by this reference incorporates, the allegations set forth
26 above in paragraphs 15 through 18 inclusive, as though set forth fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonest Acts)**

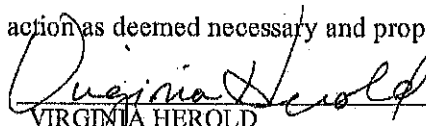
3 23. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
4 that from on or about June 25, 2012 to on or about October 12, 2012, while working as a
5 pharmacy technician at Target, Respondent committed dishonest acts by stealing controlled
6 substances and dangerous drugs from her employer, which she sold for monetary gain.
7 Complainant refers to, and by this reference incorporates, the allegations set forth above in
8 paragraphs 15 through 18, and 19, subdivision (b), 21, and 22, inclusive, as though set forth fully.

9 **PRAAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 108082, issued
13 to Desiree Jessica Reyes, also known as Desiree Jessica Briones;
- 14 2. Ordering Desiree Jessica Reyes to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 10/11/14



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

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