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

10 In the Matter of the Accusation Against:

Case No. 3942

11 **JOSE ERNESTO GARCIA**  
12 **1258 La Canada Way**  
13 **Salinas, CA 93901**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 73658**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about December 21, 2006, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 73658 to Jose Ernesto Garcia (Respondent). The Pharmacy Technician  
22 License was in full force and effect at all times relevant to the charges brought herein and will  
23 expire on February 29, 2012, unless renewed.

24  
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 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
3 federal and state laws and regulations governing pharmacy, including regulations established by  
4 the board or by any other state or federal regulatory agency.

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

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

12 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
13 drug or dangerous device except upon the prescription of an authorized prescriber.

14 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
15 controlled substance, except that furnished upon a valid prescription/drug order.

16 11. Health and Safety Code section 11170 provides that no person shall prescribe,  
17 administer, or furnish a controlled substance for himself or herself.

18 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
19 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
20 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
21 or subterfuge; or (2) by the concealment of a material fact.

22 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
23 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
24 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

25 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.  
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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

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15. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

16. Section 4022 of the Code states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

...

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

17. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

18. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

19. **Cheratussin AC** and **Robitussin AC** are among the brand names for a compound of the expectorant guaifenesin and **codeine**, a Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and Professions Code section 4022. These are also known generically as **Guaifenesin with Codeine**. These combinations are an expectorant cough syrup, and a narcotic analgesic.

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FACTUAL BACKGROUND

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2           20. From an unknown start date until on or about April 27, 2010, Respondent worked as a  
3 pharmacy technician in at least three Walgreens Pharmacy stores, two stores (Walgreens #4170;  
4 PHY 42140 and Walgreens #6419; PHY 45178) in Elk Grove, CA, and a third (Walgreens #2961;  
5 PHY 39364) in Lodi, CA, where by virtue of his employment Respondent enjoyed access to  
6 controlled substances and dangerous drugs.

7           21. During the tenure of his employment with Walgreens, Respondent used his access to  
8 divert/steal controlled substances and dangerous drugs, including **Hydrocodone with APAP** drug  
9 products, and **Xanax/alprazolam** drug products.

10           22. The exact number of instances of diversion/theft by Respondent, and the full quantity  
11 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of  
12 investigations conducted by Walgreens and by the Board, the following were reported:

13           a. On or about April 19, 2010, while at work at Walgreens #4170, Respondent  
14 participated in a random urine drug test. The test results were positive for **hydrocodone** and for  
15 **alprazolam**. (Also for **hydromorphone**, though this is a potential metabolite from **hydrocodone**  
16 and may not indicate that any **hydromorphone**-containing drugs were actually ingested.)

17           b. On or about April 27, 2010, Respondent admitted to Walgreens investigators  
18 that he had been diverting/stealing controlled substances/dangerous drugs from Walgreens #4170,  
19 Walgreens #6419, and Walgreens #2961. He said he began taking medications from Walgreens  
20 during Summer 2009. He admitted to taking seventy-five (75) tablets of **Xanax/alprazolam** (65  
21 – 2 mg tablets + 10 – 1 mg tablets) and twenty (20) **Hydrocodone with APAP 5/500** tablets.

22           c. Subsequent audits of the controlled substances stocks of the three Walgreens  
23 Pharmacy stores in which Respondent worked for the period from September 2009 to May 2010  
24 revealed the following shortages: 461 tablets of varying strengths of **alprazolam**, and 1,107  
25 tablets of varying strengths of **Hydrocodone with APAP**, short at Walgreens # 4170; 148 tablets  
26 of varying strengths of **alprazolam**, and 981 tablets of varying strengths of **Hydrocodone with**  
27 **APAP**, short at Walgreens # 6419; and 1,901 tablets of varying strengths of **alprazolam**, and 953  
28 tablets of varying strengths of **Hydrocodone with APAP**, short at Walgreens # 2961.



1 FIFTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
5 20 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

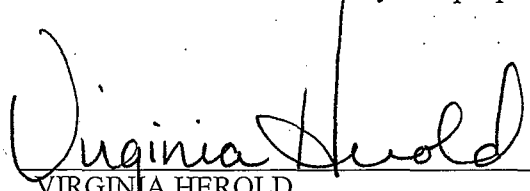
9 29. Respondent is subject to discipline under section 4301 of the Code in that  
10 Respondent, as described in paragraphs 20 to 28 above, engaged in unprofessional conduct.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License No. TCH 73658, issued to
- 15 Jose Ernesto Garcia (Respondent);
- 16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 18 3. Taking such other and further action as is deemed necessary and proper.

19 DATED: 5/27/11

20 

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

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