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8	BEFORE THE					
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS					
10	STATE OF CALI	FORNIA -				
11	In the Matter of the Accusation Against:	Case No. 4732				
12	EDWIN S. GARCIA					
13	22031 Schoolcraft Canoga Park, CA 91303	ACCUSATION				
14	Pharmacy Technician Registration No. TCH 43036					
15	Respondent.					
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17	Complainant alleges:					
18	<u>PARTIES</u>					
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity					
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).					
21	2. On or about February 26, 2002, the Board issued Pharmacy Technician Registration					
22	No. TCH 43036 to Edwin S. Garcia (Respondent). The Pharmacy Technician Registration was in					
23	full force and effect at all times relevant to the charges brought herein and expired on Februar					
24	28, 2014, and has not been renewed.					
25	<u>JURISDICTION</u>					
26	3. This Accusation is brought before the Board under the authority of the following					
27	laws. All section references are to the Business and Professions Code (Code) unless otherwis					
28	indicated.					
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7. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 1153) of Division 10 of the Health and Safety Code."

8. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, 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.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ______," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- (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.

9. Section 4059, subdivision (a), of the Code states:

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

10. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices.

11. Health and Safety Code section 11171 provides that "No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

- 12. Health and Safety Code section 11350, subdivision (a), states "Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.
- 13. Health and Safety Code section 11351 states "Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

REGULATORY PROVISIONS

14. 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.

CONTROLLED SUBSTANCE/DANGEROUS DRUG

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."

6. 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 including 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. The following drugs are referenced herein:

BRAND NAME	GENERIC NAME		DANGEROUS DRUG PER Code Section 4022	CONTROLLED SUBSTANCE PER Health and Safety Code (HSC)	INDICATION FOR USE
Norco	Hydrocodone Acetaminophen (APAP)	/	Yes	HSC 11056 (e)(4)	Pain
Carisoprodol	Soma		No	No	Muscle Relaxer

COST RECOVERY

18. Section 125.3 of the Code states, 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.

FACTUAL BACKGROUND

- 19. Costco Pharmacy, located at 21300 Roscoe Blvd, Canoga Park, California, hired Respondent on October 24, 2001.
- 20. Around the end of 2011, the Pharmacist-In —Charge (PIC) overheard Respondent talking on the phone with a person named "Liz." Shortly after the conversation, the PIC received the paperwork for an "OK" on a Norco prescription. The office representative who called in the prescription was also named "Liz."
- 21. The PIC processed the prescription, but set it aside. The following morning, the PIC called the physician's office and asked for "Liz." She was informed that no "Liz" worked there.
- 22. The PIC called another location for the same doctor. That office, also, told her that no "Liz" worked there.

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- 23. The PIC reviewed the patient's history and looked for the approval slips for all the Norco and Soma prescriptions. Upon review, the PIC found that all the prescriptions for this patient were authorized by "Liz" and taken down by Respondent. She forwarded her notes to the Loss Prevention Office.
- 24. Costco Loss Prevention conducted an investigation into the matter. Through their investigation, they discovered that Respondent had created a fake patient profile, of "Carlos Gonzales." Using that fake patient, Respondent had filled prescriptions for Norco and Soma. Costco found Respondent had filed 58 fraudulent scripts in the name of "Carlos Gonzales" since October 31, 2009.
- 25. Respondent told the Costco investigators that he had been filing prescriptions for the fake patient for about six (6) months. He said he would take the medications that were filled in "Carlos Gonzales" name from the store without paying for them, and sell them to his friends for \$600 per month. He agreed to pay Costco back \$1,449.55.
- 26. When the Board investigator questioned Respondent on why he stole the medications, he stated it was for self-use and to sell to friends.
- 27. When the Board investigator conducted an audit on the number of Norco pills Costco had on hand from May 1, 2009 to December 26, 2011, the investigator found that Costco was missing 846 pills.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Furnishing of Controlled Substance(s))

28. Respondent is subject to disciplinary action under Code section 4301, subdivisions (h), (j) and (o), and Code section 4059, in conjunction with Health and Safety Code section 11171 and Health and Safety Code section 11351, in that Respondent furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, controlled substances or dangerous drugs. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17 through 25, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

29. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) and (o), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17 through 25, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Possession of Dangerous Drugs and Controlled Substances Without a Valid Prescription)

30. Respondent is subject to disciplinary action under Code section 4301, subdivision (j) and (o), and Code Section 4060, in conjunction with Health and Safety Code section 11350, subdivision (a), in that Respondent possessed, conspired to possess, or assisted in or abetted possession of dangerous drugs and controlled substances without a valid prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17 through 25, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

$(Unprofessional\ Conduct-Acts\ Would\ Warrant\ Denial\ of\ License)$

31. Respondent is subject to disciplinary action under Code section 4301, subdivision (p) and (o), and Code Section 4060, in that Respondent committed acts that would have warranted a denial of a license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17 through 26, inclusive, as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 43036, issued to Edwin S. Garcia;

1	2.	2. Ordering Edwin S. Garcia to pay the Board of Pharmacy the reasonable costs of the				
2	investigation and enforcement of this case, pursuant to Business and Professions Code section					
3	125.3;					
4	3.	Taking such other and further	r action as deemed necessary and proper.			
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6	DATED:	26/15	1) Charles			
7	DATED		VIRGINIA NEROLD Executive Officer			
8			Board of Pharmacy Department of Consumer Affairs			
9			State of California Complainant			
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