

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

In the Matter of the Accusation Against:

ANJELICA MARIE GARCIA
25 Amber Ct.
Redlands, CA 92374

Original Pharmacy Technician License No.
TCH 74274

Respondent.

Case No. 3247

OAH No. 2010010478

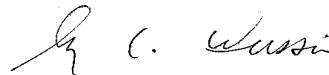
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on October 27, 2010.

It is so ORDERED September 27, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation against:

ANJELICA MARIE GARCIA,

Pharmacy Technician Registration No. TCH
74274,

Respondent.

Case No. 3247

OAH No. 2010010478

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Montclair, California, on July 12, 2010.

Scott J. Harris, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, State of California.

Austin James Turner, respondent's boyfriend, represented respondent Anjelica Marie Garcia who was also present at the hearing.

The matter was submitted on July 12, 2010.

FACTUAL FINDINGS

1. Accusation number 3247, dated October 27, 2009 was filed by complainant, Virginia Herold, (complainant), in her official capacity as the Executive Officer of the Board of Pharmacy for the State of California against respondent Anjelica Marie Garcia (respondent). The accusation alleges respondent holds a Pharmacy Technician Registration and she was found to be in possession of and a user of a controlled substance.

2. On February 5, 2007, the Board of Pharmacy (the Board) issued respondent Pharmacy Technician Registration No. TCH 74274. Respondent's registration is in full force and effect and was due to expire on July 31, 2010, unless renewed.

3. On November 25, 2007, respondent was riding in a vehicle with a man who was then her boyfriend. The vehicle was stopped by a police officer from the San Bernardino Sheriff's Department. The police officer contacted the driver of the vehicle and respondent. While speaking to respondent and the driver, the police officer detected a strong odor of marijuana coming from the inside of the vehicle. The police officer found a small metal canister in a make-up bag in the back seat that had a white powdery substance in it. Respondent acknowledged that the powdery substance was cocaine and that it belonged to her. She also admitted to the police officer that she had used cocaine that day. Respondent was arrested for the use and possession of a controlled substance, specifically cocaine. Respondent did not suffer a conviction as a result of this arrest because she was put into a drug abuse diversion program which she successfully completed.

4. Respondent readily admitted to the charges alleged against her regarding drug possession and drug use and she has worked to overcome her problem with drug abuse. In November 2008, she completed the court ordered drug abuse program at the Vista Guidance Center. She obtained a job at Longs Drugs and she has now worked for CVS Pharmacy for the last two years. Respondent was drug tested twice when she was first hired as a pharmacy technician, but it is not known if that was before or after her arrest. She is now in a new relationship for the last two years with Turner, a man who works as a teacher at a local college and seems to be a great support for respondent. Respondent has done some charity work with Walk for the Cure. She should be highly commended for turning her life around after clearly getting off track. Respondent has made strides towards rehabilitation.

5. However, respondent's rehabilitation appears to be incomplete. She does not currently participate in any ongoing recovery program to help her stay drug-free. She participated in a 12-step program that was court ordered, but did not continue with Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) after the required classes and meetings were completed. She does not have a sponsor and does not attend meetings. She does not know what her sobriety date is. Respondent does not appear to have any support system in place to help her refrain from drug use, other than the moral support of her current boyfriend. Respondent was found to be in possession of and using a very serious controlled substance just nine months after she was first licensed as a pharmacy technician. She testified she took this drug in order to feel accepted. She did not present any evidence to demonstrate that she has dealt with the underlying emotional issues that may have caused her drug use. There was no evidence that respondent has obtained any therapy other than what may have been provided during the court ordered program. Respondent has not done anything else to maintain her sobriety since completing the court ordered program other than trying to live a better life with better friends. It is also troubling that while respondent blamed her drug use on hanging out with the wrong crowd, in particular her ex-boyfriend, she stayed with him after her arrest and took him in to live with her when he was released from jail in April 2008. This occurred well after she was supposed to have stopped her drug use in November 2007, but she failed to explain why she continued to stay with him and how she was able to stay clean and sober for this period of time while this man was still in her life.

6. Based on the insufficient showing of full rehabilitation, there is simply too much risk that respondent could resort to her old ways with the wrong influence or in difficult times. The Board must be able to rely on its licensees who may be given access at anytime to dangerous narcotics and other controlled substances while on the job. Respondent needs a more complete support system and needs more time to establish a longer track record of living a clean and sober lifestyle. There is no assurance that respondent would not once again resort to drug abuse if faced with old influences or emotional difficulties. Therefore, it would not be in the public interest to allow respondent to continue to hold a license as a pharmacy technician at this time.

7. Complainant incurred \$2,665.25 in costs to prosecute this case against respondent. This amount reflects the costs for tasks performed in the preparation and presentation of this case at hearing, including case assessment and evaluation, preparation of pleadings, case management, communications with the other party, preparation of evidence, and preparation for trial. The total amount of costs of \$2,665.25 is reasonable in light of the nature and level of complexity of this matter as presented at hearing.

LEGAL CONCLUSIONS

1. Cause exists to revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code section 4301 in that she was found to be in possession of a controlled substance in violation of Business and Professions Code sections 4060 and 11350, as set forth in Findings 2-6.

2. Cause exists to revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code section 4301, subdivisions (h) and (j), in that respondent used and was under the influence of a controlled substance, as set forth in Findings 2-6.

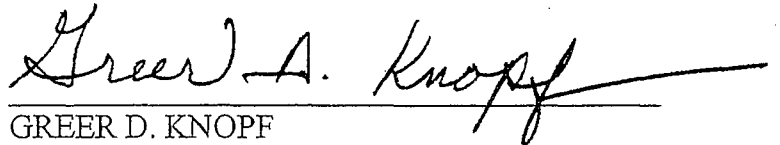
3. Cause exists pursuant to Business and Professions Code section 125.3 to award reasonable costs in the amount of \$2,665.25 to complainant for the prosecution of this action against respondent, as set forth in Finding 7.

ORDER

1. Pharmacy technician registration no. TCH 74274 issued to Anjelica Marie Garcia by the Board of Pharmacy, State of California, is hereby revoked.

2. Respondent Anjelica Marie Garcia is hereby ordered to pay the amount of \$2,665.25 in reasonable costs to complainant.

DATED: 8/10/2010



GREER D. KNOPF

Administrative Law Judge

Office of Administrative Hearings

Exhibit A
Accusation No. 3247

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3247

13 **ANJELICA MARIE GARCIA**
25 Amber Ct.
Redlands, CA 92374

A C C U S A T I O N

14 **Pharmacy Technician Registration**
15 **No. TCH 74274**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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.

21 2. On or about February 5, 2007, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 74274 to Anjelica Marie Garcia (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on July 31, 2010, unless renewed.

25 **JURISDICTION**

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 unless otherwise indicated.

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STATUTORY PROVISIONS

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2 4. Section 4300 provides, in pertinent part, that every license issued by the Board is
3 subject to discipline, including suspension or revocation.

4 5. Section 4301 states:

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

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9 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
10 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
11 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
12 to the extent that the use impairs the ability of the person to conduct with safety to the public the
13 practice authorized by the license.

14

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

17

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

22 6. Section 4060 states, in pertinent part:

23 "No person shall possess any controlled substance, except that furnished
24 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
25 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
26 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
27 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
28 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or

1 physician assistant, when in stock in containers correctly labeled with the name and
2 address of the supplier or producer.”

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8 7. Health and Safety Code section 11350, subdivision (a), states:

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“(a) Except as otherwise provided in this division, every person who possesses (1) 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 (2) 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.”

8 COST RECOVERY

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

13 CONTROLLED SUBSTANCE

14 9.. “Cocaine,” is a Schedule II controlled substance as defined in Health and Safety Code
15 section 11055(b)(6) and is categorized as a dangerous drug pursuant to section 4022.

16 FIRST CAUSE FOR DISCIPLINE

17 (Possession of a Controlled Substance)

18 10. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
19 (o), in that Respondent was found to be in possession of a controlled substance in violation Code
20 section 4060 and Health and Safety Code section 11350, subdivision (a). On or about November
21 25, 2007 during a traffic stop by a police officer from the San Bernardino Sheriff's Department,
22 Respondent and the driver of her vehicle were contacted by the police officer. While speaking to
23 Respondent and the driver, the police officer detected a strong odor of marijuana emitting from
24 the interior of the vehicle. Respondent admitted to the police officer that she had used cocaine
25 earlier that day. During a search of Respondent's vehicle, the police officer found a small metal
26 canister in a make-up bag in the back seat that contained a white powdery substance. Respondent
27 acknowledged that it was cocaine and was subsequently arrested for possession of a controlled
28 substance.

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SECOND CAUSE FOR DISCIPLINE

(Use/Under Influence of a Controlled Substance)

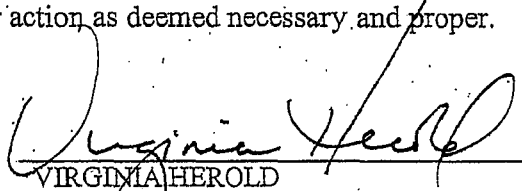
11. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and (j), in that on or about November 25, 2007, Respondent, by her own admission, used and/or was under the influence of a controlled substance. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, as though set forth in full.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 74274, issued to Respondent.
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/24/09


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

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