

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MATTHEW A. KING
Deputy Attorney General
4 State Bar No. 265691
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-7446
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 4004

13 **WENDY GARCIA**
5819 Fayette St.
Los Angeles, CA 90042

DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

14 Pharmacy Technician Registration No. TCH
15 91004

16 Respondent.
17

18 **FINDINGS OF FACT**

19 1. On or about July 6, 2011, Complainant Virginia Herold, in her official capacity as the
20 Executive Officer of the Board of Pharmacy, filed Accusation No. 4004 against Wendy Garcia
21 (Respondent) before the Board of Pharmacy, Department of Consumer Affairs (Board).

22 2. On or about April 26, 2010, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 91004 to Respondent. The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2012, unless renewed.

26 3. On or about July 14, 2011, Respondent was served by certified mail copies of the
27 following documents: Accusation No. 4004, Statement to Respondent, Notice of Defense forms,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7). A copy of the Accusation and Declaration of Service are attached hereto as Exhibit
2 "A" and are incorporated as if fully set forth herein.

3 4. The Respondent was served at her address of record, which is:

4 5819 Fayette St.

5 Los Angeles, CA 90042

6 Pursuant to Business and Professions Code section 136 and/or the agency-specific statute or
7 regulation, the Respondent is required to notify the Board of any change in mailing address
8 within 30 days after the change, unless the Board has specified by regulations a shorter time
9 period.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 6. Government Code section 11506 states:

14 (a) Within 15 days after service of the accusation the respondent may file
15 with the agency a notice of defense in which the respondent may:

16 (1) Request a hearing.

17 (2) Object to the accusation upon the ground that it does not state acts or
18 omissions upon which the agency may proceed.

19 (3) Object to the form of the accusation on the ground that it is so indefinite
20 or uncertain that the respondent cannot identify the transaction or prepare a
21 defense.

22 (4) Admit the accusation in whole or in part.

23 (5) Present new matter by way of defense.

24 (6) Object to the accusation upon the ground that, under the circumstances,
25 compliance with the requirements of a regulation would result in a material
26 violation of another regulation enacted by another department affecting
27 substantive rights.

28 (b) Within the time specified respondent may file one or more notices of
defense upon any or all of these grounds but all of these notices shall be filed
within that period unless the agency in its discretion authorizes the filing of a
later notice.

(c) The respondent shall be entitled to a hearing on the merits if the
respondent files a notice of defense, and the notice shall be deemed a specific
denial of all parts 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.

Unless objection is taken as provided in paragraph (3) of subdivision (a), all
objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the
respondent and shall state the respondent's mailing address. It need not be

verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

7. Respondent failed to file a Notice of Defense within fifteen (15) days after service of the Accusation, and therefore the Respondent has waived her right to a hearing on the merits of Accusation No. 4004.

8. California Government Code section 11520 states:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following: (1) Failure of the person to receive notice served pursuant to Section 11505. (2) Mistake, inadvertence, surprise, or excusable neglect.

9. Pursuant to its authority under Government Code section 11520, the Board of Pharmacy, Department of Consumer Affairs, finds Respondent is in default. The Board of Pharmacy takes action without further hearing and based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet, and by taking official notice of all the investigatory reports, exhibits and statements contained therein.

10. Pursuant to its authority under Government Code section 11520, the Board of Pharmacy, Department of Consumer Affairs finds the charges and allegations in Accusation No. 4004, are separately and severally true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$3,195, as of August 25, 2011.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Wendy Garcia has subjected her
3 Pharmacy Technician Registration No. TCH 91004 to discipline.

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

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 Registration No. TCH 91004 based upon the violations alleged in Accusation 4004, which are
7 supported by the evidence contained in the Default Decision Investigatory Evidence Packet for
8 this case.

9 a. Violation of Business and Professions Code sections 4300 and 4301, subdivision (l),
10 for unprofessional conduct in that Respondent was convicted of a crime substantially related to
11 the qualifications, functions, and duties of a Registered Pharmacy Technician. On or about
12 December 15, 2010, Respondent was convicted, upon a plea of nolo contendere, of violating
13 Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent or more, by
14 weight, of alcohol in the blood), a misdemeanor, in the criminal proceeding entitled *The People of*
15 *the State of California v. Wendy Garcia* (Super. Ct. Los Angeles County, 2010, No.
16 OWW06850).

17 b. Violation of Business and Professions Code sections 4300 and 4301, subdivision (h),
18 for use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
19 oneself or to the public.

20 c. Violation of Business and Professions Code sections 480, subdivision (a)(1), 4300,
21 and 4301, subdivision (p), for committing acts which would warrant denial of licensure.

22 d. Violation of Business and Professions Code sections 4300 and 4301, subdivision (k),
23 for being convicted of a crime involving the use, consumption, or self-administration of an
24 alcoholic beverage.

25 ///

26 ///

27 ///

28 ///

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MATTHEW A. KING
Deputy Attorney General
State Bar No. 265691
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-7446
Facsimile: (213) 897-2804
6 *Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 4004

11 **WENDY GARCIA**
12 5819 Fayette St.
Los Angeles, CA 90042

ORDER
[Gov. Code, §11520]

13 Pharmacy Technician Registration No. TCH
14 91004

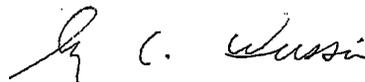
15 Respondent.
16

17 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 91004, heretofore
18 issued to Respondent Wendy Garcia, is revoked.

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

23 This Decision shall become effective on December 21, 2011.

24 It is so ORDERED November 21, 20



25
26 **STANLEY C. WEISSER, BOARD PRESIDENT**
27 **FOR THE BOARD OF PHARMACY**
28 **DEPARTMENT OF CONSUMER AFFAIRS**

Exhibit A

Accusation

Exhibit A
Accusation No. 4004

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MATTHEW A. KING
Deputy Attorney General
4 State Bar No. 265691
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-7446
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 4004

12 **WENDY GARCIA**
5819 Fayette St.
13 Los Angeles, CA 90042

ACCUSATION

14 Pharmacy Technician Registration No. TCH
91004

15
16 Respondent.

17
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 (Board).
22 2. On or about April 26, 2010, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 91004 to Wendy Garcia. (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on April 30, 2012, unless renewed.
26

27 ///

28 ///

1 percent or more, by weight, of alcohol in the blood), a misdemeanor, in the criminal proceeding
2 entitled *The People of the State of California v. Wendy Garcia* (Super. Ct. Los Angeles County,
3 2010, No. OWW06850). The Court sentenced Respondent to 96 hours in jail, placed her on 48
4 months probation, ordered her to pay fines and restitution, to complete a second-offender alcohol
5 program, and to participate in the Victim Impact Panel of Mothers Against Drunk Driving.

6 11. The circumstances surrounding the conviction are that on or about October 10, 2010,
7 Respondent drove after drinking eight glasses of alcohol over a six-hour period. In a state of
8 intoxication, Respondent "took a wrong turn" onto an active rail line and immobilized her car
9 between a rail tie and a bed of rocks. Two bystanders pulled Respondent to safety before a train
10 collided with Respondent's car, pushing the car one hundred feet from its initial location.
11 Whittier Police Department Officer Hernandez arrived on the scene and met with Respondent.
12 Respondent exuded a "strong odor" of alcohol, spoke in an "extremely slurred" manner, and
13 displayed bloodshot and watery eyes. Officer Hernandez asked Respondent whether she had
14 been drinking prior to driving. Respondent answered that she had four glasses of wine and four
15 beers at a friend's house three hours prior to driving. She stated that she drove onto the railroad
16 tracks because she was "drunk and just was really sleepy." Officer Hernandez invited
17 Respondent to participate in a series of field sobriety tests. Respondent agreed to perform the
18 tests including the One Leg Time 30 second test, Walk and Turn test, Alphabet Recital test, and
19 Number Count test. Respondent failed all four tests. She was "extremely unstable on her feet"
20 during the One Leg Time and Walk and Turn tests. She was unable to complete the alphabet
21 without repeating or skipping letters, and she could not count backwards from 67 to 57. When
22 tested, Respondent exhibited an immediate horizontal gaze nystagmus. Based on the totality of
23 the circumstances, Officer Hernandez arrested Respondent for driving under the influence of
24 alcohol. He advised Respondent of her obligation to submit to a test to evaluate the level of
25 alcohol in her system. Respondent elected to have blood drawn. An analyst for the Los Angeles
26 County Sheriff's Department, Scientific Services Bureau, tested the sample and concluded that it
27 contained .29 percent alcohol by weight. Respondent's conviction of driving with a blood
28 alcohol level of .08 percent or higher is substantially related to the qualifications, functions, and

1 duties of a Registered Pharmacy Technician.

2 **SECOND CAUSE FOR DISCIPLINE**

3 (Use of Alcohol to an Extent Dangerous to Self or Others)

4 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
5 subdivision (h), for use of alcoholic beverages to the extent or in a manner as to be dangerous or
6 injurious to oneself or to the public, in that Respondent drove while intoxicated with a blood
7 alcohol concentration more than three times the legal limit. Respondent drove onto an active rail
8 line and became trapped, exposing rescuers and train passengers to substantial risk of injury or
9 death. Complainant refers to and by this reference incorporates the allegations set forth above in
10 paragraphs 11–12, inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Commission of Acts Warranting Denial of Licensure)

13 13. Respondent is subject to disciplinary action under sections 480, subdivision (a)(1),
14 4300, and 4301, subdivision (p), for committing acts, which would warrant denial of licensure, in
15 that Respondent was convicted of driving with a blood alcohol content of .08 percent or more.
16 Respondent's conviction is substantially related to the qualifications, functions, and duties of a
17 Registered Pharmacy Technician. Complainant refers to and by this reference incorporates the
18 allegations set forth above in paragraphs 11–12, inclusive, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Conviction of More than One Misdemeanor Involving Use of Alcohol)

21 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
22 subdivision (k), in that Respondent has been convicted of more than one misdemeanor involving
23 the use, consumption, or self-administration of an alcoholic beverage. Respondent was convicted
24 twice of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent
25 or more, by weight, of alcohol in the blood). Respondent was convicted on or about January 13,
26 2005 and on or about December 15, 2010. Complainant refers to and by this reference
27 incorporates the allegations set forth above in paragraphs 11–12, inclusive, as though set forth
28 fully.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

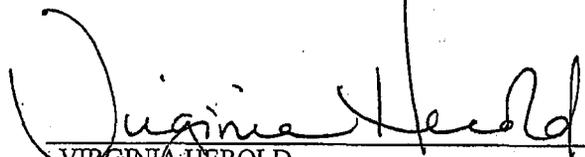
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1.1. Revoking or suspending Pharmacy Technician Registration Number TCH 91004, issued to Wendy Garcia;

1.2. Ordering Wendy Garcia to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

1.3. Taking such other and further action as deemed necessary and proper.

DATED: 7/6/11



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

LA2011501121
50888068.docx