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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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12	In the Matter of the Accusation Against:	Case No. 4260	
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14	YESENIA RODARTE 12001 Foothill Blvd, SP 20	DEFAULT DECISION AND ORDER	
15	Sylmar, CA 91342 Pharmacy Technician Registration No. TCH	[Gov. Code, §11520]	
16 17	84759		
18 19	Respondent.		
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22	FINDING	S OF FACT	
23	1. On or about August 31, 2012, Complainant Virginia K. Herold, in her official		
24	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,		
25	filed Accusation No. 4260 against Yesenia Rodarte (Respondent) before the Board of Pharmacy.		
26	(Accusation attached as Exhibit A.)		
27	2. On or about August 2, 2008, the Board of Pharmacy (Board) issued Pharmacy		
28	Technician Registration No. TCH 84759 to Respondent. The Pharmacy Technician Registration		
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	· · ·	DEFAULT DECISION AND ORDER	

was in full force and effect at all times relevant to the charges brought in Accusation No. 4260 1 and expired on March 31, 2012. This lapse in licensure, however, pursuant to Business and 2 Professions Code section 118(b) does not deprive the Board of its authority to institute or 3 continue this disciplinary proceeding. 4 3. On or about September 18, 2012, Respondent was served by Certified and First Class 5 Mail with copies of the Accusation No. 4260, Statement to Respondent, Notice of Defense, 6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, 7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions 8 Code section 4100, is required to be reported and maintained with the Board. Respondent's 9 address of record was and is: 10 11 12001 Foothill Blvd, SP 20 Sylmar, CA 91342. 12 4. Service of the Accusation was effective as a matter of law under the provisions of 13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section 14 124. 15 5. Confirmation of service was received by the Office of the Attorney General in or 16 about September, 2012 and was signed on September 20, 2012, by "Maria Rodarte". None of the 17 aforementioned documents were returned by the U.S. Postal Service. 18 6. Government Code section 11506 states, in pertinent part: 19 (c) The respondent shall be entitled to a hearing on the merits if the respondent 20 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 21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. 22 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of 23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4260. 24 8. California Government Code section 11520 states, in pertinent part: 25 (a) If the respondent either fails to file a notice of defense or to appear at the 26hearing, 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 27 respondent. 28 2

DEFAULT DECISION AND ORDER

1	9. Pursuant to its authority under Government Code section 11520, the Board finds			
2	Respondent is in default. The Board will take action without further hearing and, based on the			
3	relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as			
4	taking official notice of all the investigatory reports, exhibits and statements contained therein on			
5	file at the Board's offices regarding the allegations contained in Accusation No. 4260, finds that			
6	the charges and allegations in Accusation No. 4260, are separately and severally, found to be true			
7	and correct by clear and convincing evidence.			
8	10. Taking official notice of its own internal records, pursuant to Business and			
9	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation			
10	and Enforcement is \$3527.50 as of January 22, 2013.			
11	DETERMINATION OF ISSUES			
12	1. Based on the foregoing findings of fact, Respondent Yesenia Rodarte has subjected			
13	her Pharmacy Technician Registration No. TCH 84759 to discipline.			
14	2. The agency has jurisdiction to adjudicate this case by default.			
15	3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician			
16	Registration based upon the following violations alleged in the Accusation which are supported			
17	by the evidence contained in the Default Decision Evidence Packet in this case:			
18	a. <u>Unprofessional Conduct</u> - Illegal Possession of Controlled Substances in violation of			
19	Business and Professions Code sections 4300 and 4301, subdivision (o), for violating section			
20	4060.			
21	b. <u>Unprofessional Conduct</u> - Use of a Controlled Substance without a Valid			
22	Prescription in violation of Business and Professions Code sections 4300 and 4301, subdivision			
23	(h),			
24	c. <u>Unprofessional Conduct</u> - violation of Business and Professions Code section 4300			
25	and 4301, subdivision (j), for violating provisions of the Health and Safety Code as follows:			
26	1. Section 11170 (furnishing controlled substances for herself), and			
27	2. Section 11173, subdivision (a), (obtaining controlled substances by fraud,			
28	deceit or subterfuge).			
	3			

DEFAULT DECISION AND ORDER

1	d. <u>Unprofessional Conduct</u> - Acts Involving Moral Turpitude, Dishonesty, Fraud,		
2	Deceit and/or Corruption in violation of Business and Professions Code sections 4300 and 4301,		
3	subdivision (f).		
4			
5	ORDER		
6	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 84759, heretofore		
7	issued to Respondent Yesenia Rodarte, is revoked.		
8	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a		
9	written motion requesting that the Decision be vacated and stating the grounds relied on within		
10	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
11	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.		
12	This Decision shall become effective on April 10, 2013.		
13	It is so ORDERED ON March 11, 2013.		
14	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
15	STATE OF CALIFORNIA		
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17	la C. Wussi		
18	By STANLEY C. WEISSER		
19	Board President		
20			
21	51227323.DOC           DOJ Matter ID:LA2012602629		
22	Attachment:		
23	Exhibit A: Accusation		
24			
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	4 DEFAULT DECISION AND ORDER		

# Exhibit A

Accusation

1	Kamala D. Harris		
2	Attorney General of California		
3	Supervising Deputy Attorney General LESLIE A. WALDEN		
4	Deputy Attorney General State Bar No. 196882		
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-8944 Facsimile: (213) 897-2804		
7	Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. 4260		
12	YESENIA RODARTE		
13	12001 Foothill Blvd, SP 20Sylmar, CA 91342A C C U S A T I O N		
14	Pharmacy Technician Registration No. TCH		
15	84759 Berner dert		
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.		
22	2. On or about August 2, 2008, the Board of Pharmacy (Board) issued Pharmacy		
23	Technician Registration No. TCH 84759 to Yesenia Rodarte (Respondent). The Pharmacy		
24	Technician Registration was in full force and effect at all times relevant to the charges brought		
25	herein and expired on March 31, 2012.		
26	JURISDICTION		
27	3. This Accusation is brought before the Board under the authority of the following		
28	laws. All section references are to the Business and Professions Code unless otherwise indicated.		
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	Accusatio		

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1	STATUTORY PROVISIONS
2	4. Section 118, subdivision (b), provides, in pertinent part, that the suspension,
3	expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to
4	proceed with a disciplinary action during the period within which the license may be renewed,
5	restored, reissued or reinstated.
6	5. Section 4060 states, in pertinent part:
7	"No person shall possess any controlled substance, except that furnished to a person upon
8	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
10	nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
11	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
12	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
13	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
14	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
15	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
16	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
17	labeled with the name and address of the supplier or producer.
18	"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
19	physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
20	devices."
21	6. Section 4300 states, in pertinent part, that every license issued by the Board is subject
22	to discipline, including suspension or revocation.
23	7. Section 4301 states, in pertinent part:
24	"The board shall take action against any holder of a license who is guilty of unprofessional
25	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
26	Unprofessional conduct shall include, but is not limited to, any of the following:
27	• • • • •
28	"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
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corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

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

## **REGULATORY PROVISIONS**

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

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## DRUG STATUTES

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9. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
administer, or furnish a controlled substance for himself."

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Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall
 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
 or subterfuge; or (2) by the concealment of a material fact."

#### COST RECOVERY

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

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#### CONTROLLED SUBSTANCES-DANGEROUS DRUGS

12. "Hydrocodone" is a Schedule II controlled narcotic substance pursuant to Health and 11 Safety Code section 11055, subdivision (b)(I) and a dangerous drug pursuant to section 4022. 12 Preparations containing hydrocodone in combination with other non-narcotic medicinal 13 ingredients are in Schedule III pursuant to Health and Safety Code section 11056, subdivision (e). 14 13. "Phentermine" a stimulant, with brand names of Adipex and Fastin, is a Schedule IV 15 controlled substance pursuant to the Health and Safety Code section 11057, subdivision (f)(4), 16 and a dangerous drug pursuant to section 4022. 17 FIRST CAUSE FOR DISCIPLINE 18 (Illegal Possession of Controlled Substances) 19 14. Respondent is subject to disciplinary action under sections 4300 and 4301, 20 subdivision (o), for violating section 4060, on the grounds of unprofessional conduct, in that 21 Respondent possessed controlled substances without valid prescriptions as follows: 22 On or about between August 15, 2008 and March 4, 2011, Respondent was employed a. 23

24 as a full-time pharmacy technician at Bryant Ranch Prepack ("BRP"), a wholesaler pharmacy.

b. BRP audited Respondent's shifts from January 2011 through June 2011 and found
losses based upon employee pilferage. A Drug Enforcement Administration form, "Report of
Theft or Loss of Controlled Substances", was filed by BRP, reporting Respondent's theft of
controlled substances as follows:

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1		NDC Number:	Trade Name:	Quantity Lost:
2	1.	53746011010	Hydrocodone-Apap 10-325 Tablet	1,741 Tablets
3	2.	63629152903	Hydrocodone-Apap 7.5-750 Tablet	55 Tablets
4	3.	63629158406	Phentermine 37.5 Mg. Tablet	107 Tablets
5	4.	63629317808	Hydrocodone-Acetaminoph 7.5-500	22 Tablets
6			Tablet	
7.	5.	537460109	Hydrocodone/apap 5/325 Tablet	21 Tablets
8	c.	On or about July 15,	, 2011, Respondent admitted to obtaining, p	oossessing and using
9	"Phentermine", a controlled substance and dangerous drug, without a valid prescription.			
10	SECOND CAUSE FOR DISCIPLINE			
11		(Use of a Cont	rolled Substance without a Valid Prescri	ption)
12	15.	Respondent is subje	ct to disciplinary action under sections 430	0 and 4301,
13	subdivision (h), on the grounds of unprofessional conduct, in that in or between January 2011 and			ween January 2011 and
14	June 2011, Respondent used controlled substances, without valid prescriptions. Complainant			
15	refers to, and by this reference incorporates, the allegations set forth above in paragraph 14,			in paragraph 14,
16	subparagra	aphs (a) through (c), in	clusive, as though set forth fully.	
17		<u><u> </u></u>	HIRD CAUSE FOR DISCIPLINE	
18			(Violating Drug Statutes)	
19	16. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision			and 4301, subdivision
20	(j), on the grounds of unprofessional conduct, for violating provisions of the Health and Safety			
21	Code as follows:			
22	a.	Section 11170, for f	urnishing controlled substances for herself.	
23	b.	Section 11173, subc	livision (a), for obtaining controlled substat	nces by fraud, deceit or
24	subterfuge.			
25	Complainant refers to, and by this reference incorporates, the allegations set forth above in			ions set forth above in
26	paragraph	14, subparagraphs (a)	through (c), inclusive, as though set forth	fully.
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28	111			
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1	FOURTH CAUSE FOR DISCIPLINE		
2	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)		
3	17. Respondent is subject to disciplinary action under sections 4300 and 4301,		
4	subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts		
5	involving moral turpitude, dishonesty, fraud, deceit and/or corruption. Complainant refers to, and		
6	by this reference incorporates, the allegations set forth above in paragraphs 14 through 16,		
7.	inclusive, as though set forth fully.		
8	PRAYER		
9	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
10	and that following the hearing, the Board issue a decision:		
11	1. Revoking or suspending Pharmacy Technician Registration No. TCH 84759, issued		
12	to Yesenia Rodarte;		
13	2. Ordering Yesenia Rodarte to pay the Board of Pharmacy the reasonable costs of the		
. 14	investigation and enforcement of this case, pursuant to Business and Professions Code section		
15	125.3; and		
16	3. Taking such other and further action as deemed necessary and proper.		
17			
18	DATED: 8/31/12 Juginia Herold		
19	Executive Officer Board of Pharmacy		
20	Department of Consumer Affairs State of California		
21	<i>Complainant</i>		
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