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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. 4609

13 **JUDITH Y. GARCIA**

DEFAULT DECISION AND ORDER

14 2201 Ivanhoe Drive
Oxnard, CA 93030

15 **Pharmacy Technician Registration No. TCH**
16 **112357**

[Gov. Code, §11520]

Respondent.

17 **FINDINGS OF FACT**

18 1. On or about October 21, 2013, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4609 against Judith Y. Garcia (Respondent) before the Board of Pharmacy.
21 (Accusation attached as Exhibit A.)

22 2. On or about November 7, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 112357 to Respondent. The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought in Accusation No. 4609
25 and will expire on January 31, 2015, unless renewed.

26 3. On or about October 29, 2013, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 4609, Statement to Respondent, Notice of Defense, Request
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100, is required to be reported and maintained with the Board. Respondent's address of
3 record was and is:

4 2201 Ivanhoe Drive
5 Oxnard, CA 93030.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 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.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
14 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4609.

15 7. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

19 8. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
22 taking official notice of all the investigatory reports, exhibits and statements contained therein on
23 file at the Board's offices regarding the allegations contained in Accusation No. 4609, finds that
24 the charges and allegations in Accusation No. 4609, are separately and severally, found to be true
25 and correct by clear and convincing evidence.

26 9. Taking official notice of its own internal records, pursuant to Business and
27 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
28 and Enforcement is \$1,420.00 as of December 11, 2013.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Judith Y. Garcia has subjected
3 her Pharmacy Technician Registration No. TCH 112357 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 based upon the following violations alleged in the Accusation which are supported
7 by the evidence contained in the Default Decision Evidence Packet in this case:

8 a. Business and Professions Code Sections 4300 and 4301(j), in conjunction with
9 Business and Professions Code Section 4060, for Illegal Possession of a Controlled
10 Substance(s)/Dangerous Drug(s); and

11 b. Business and Professions Code Sections 4300 and 4301(j), for General
12 Unprofessional Conduct.

13 ORDER

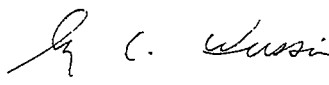
14 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 112357, heretofore
15 issued to Respondent Judith Y. Garcia, is revoked.

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

20 This Decision shall become effective on February 24, 2014.

21 It is so ORDERED ON January 24, 2014.

22 BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS
24 STATE OF CALIFORNIA

25 
26 By _____
27 STAN C. WEISSER
28 Board President

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DOJ Matter ID: LA2013509109
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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7 *Attorneys for Complainant*

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. 4609

12 **JUDITH Y. GARCIA**
2201 Ivanhoe Drive
13 Oxnard, CA 93030

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 112357

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.

22 2. On or about November 7, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 112357 to Judith Y. 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 January 31, 2015, unless renewed.

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1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
2 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 28361.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to Section 4052 or 4052.2. This section shall not apply to the possession
5 of any controlled substance by a . . . pharmacy, pharmacist . . . when in stock in containers
6 correctly labeled with the name and address of the supplier or producer.”

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

9 9. Section 4301 states in pertinent part:

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

13

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

16 COST RECOVERY

17 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
18 law judge to direct a licensee found to have committed a violation or violations of the licensing
19 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
20 case.

21 CONTROLLED SUBSTANCES/ DANGEROUS DRUGS

22 11. "Methamphetamine" is a Schedule II controlled substance as defined in Health and
23 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
24 Section 4022. It stimulates the central nervous system.

25 12. "Xanax" (generic – Alprazolam) is a depressant and a Schedule IV controlled
26 substance as designated by Health and Safety Code section 11057, subdivision (d)(1). It is
27 categorized as a dangerous drug pursuant to Section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Illegal Possession of a Controlled Substance(s)/ Dangerous Drug(s))**

3 13. Respondent is subject to disciplinary action under Sections 4300 and 4301,
4 subdivision (j), in conjunction with Section 4060, on the grounds of unprofessional conduct, in
5 that Respondent was in possession of a controlled substance(s) and/or dangerous drug(s), as
6 follows:

7 a. On or about July 7, 2012, during an investigation by the Ventura County
8 Sheriff's Department, Respondent was contacted. When Officers asked her for identification, she
9 was observed to be nervous and talkative. After two minutes of looking for her identification, the
10 officer asked if she had anything with her name and date of birth on it. Respondent provided a
11 Costco card. During a consent search of her personal belongings to locate her identification, the
12 officer found an "Altoids" can, which contained a small, clear, plastic zip-lock baggie that
13 contained a small amount of a white, crystal-like substance, which appeared to be
14 Methamphetamine. The officer also found a yellow pill with the ends cut off, that appeared to be
15 a Xanax, along with a rolled-up dollar bill and a round, metal mesh. When asked if the drugs
16 were hers, Respondent replied, "The drugs are not mine, but I knew they were in there."
17 Respondent admitted she did not have a prescription for Xanax.

18 b. Respondent was subsequently arrested for violating Health and Safety Code
19 Section 11377(A) [possession of a prescribed controlled substance] and Section 4060 [possession
20 of drug without a prescription]. During the booking process, Respondent was asked if she has
21 used the drugs located in the "Altoids" container. Respondent, after being advised of her Miranda
22 rights, claimed that she kept the drugs for someone else and denied the Xanax pill belonged to her
23 because she does not use Xanax. However, Respondent reiterated she had previously used drugs
24 from the "Altoids" container. She also admitted that she put the "Altoids" can in the plastic bag
25 when she left her vehicle, after the officer drove by her. A Ventura County Sheriff's Department
26 Officer conducted a presumptive test on the white, crystal-like substance, which weighed
27 approximately .03 grams (including packaging), and it tested positive for amphetamines.

28 c. Subsequently, on or about November 2, 2012, after pleading guilty to Count

1 One, the Court placed Respondent on a 24-month Deferred Entry of Judgment program for
2 violating Health and Safety Code Section 11377(a) [possession of a controlled substance
3 (Methamphetamine)], a felony, in the criminal proceeding entitled *The People of the State of*
4 *California v. Judith Yvonne Garcia* (Super. Ct. Ventura County, 2012, No. 2012024707). Count
5 Two, a misdemeanor violation of Section 4060, was dismissed. Respondent was ordered to report
6 immediately to the probation agency, to maintain regular employment, not to use or possess any
7 narcotics, dangerous drugs or controlled substances (without a prescription), to immediately
8 obtain drug counseling and participate until allowed to terminate by the court, and to pay various
9 fines and fees. In addition, Respondent was directed to return to the criminal court for a
10 Diversion Deferred Entry Review on October 2, 2014.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 14. Respondent is subject to disciplinary action under Sections 4300 and 4301,
14 subdivision (j), in that Respondent committed acts of unprofessional conduct. Complainant refers
15 to, and by this reference incorporates each of the allegations set forth above in Paragraph 13,
16 subparagraphs a through c, inclusive, as though set forth fully herein.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112357, issued
21 to Judith Y. Garcia;

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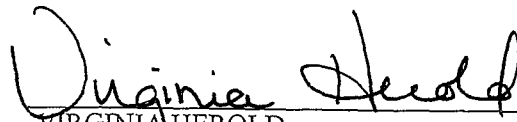
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2. Ordering Judith Y. Garcia to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/21/13



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

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