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

In the Matter of the Accusation Against:

MARC WILLIAM GARCIA
3992 Berryman Ave.
Los Angeles, CA 90066
Pharmacy Technician Registration No. TCH
67497

Respondent.

Case No. 4709

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 2, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4709 against Marc William Garcia (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 22, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 67497 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4709

1 expired on February 28, 2014, and has not been renewed. This lapse in licensure, however,
2 pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not
3 deprive the Board of its authority to institute or continue this disciplinary proceeding.

4 3. On or about December 2, 2013, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 4709, Statement to Respondent, Notice of Defense, Request
6 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
7 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
8 section 4100, is required to be reported and maintained with the Board. Respondent's address of
9 record was and is:

10 3992 Berryman Ave.
11 Los Angeles, CA, 90066.

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. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
23 4709.

24 7. 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
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 4709, finds that
3 the charges and allegations in Accusation No. 4709, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 9. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$1,910.00 as of May 20, 2014.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Marc William Garcia has
10 subjected his Pharmacy Technician Registration No. TCH 67497 to discipline.

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

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
13 Registration based upon the following violations alleged in the Accusation which are supported
14 by the evidence contained in the Default Decision Evidence Packet in this case.:

15 a. Conviction of a Substantially Related Crime: Respondent is subject to disciplinary
16 action under sections 4301, subdivision (l) and 490, in conjunction with California Code of
17 Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially
18 related to the qualifications, functions or duties of a pharmacy technician. Respondent was
19 convicted of two felony counts of violating Penal Code section 459 [second degree commercial
20 burglary] in the criminal proceeding entitled *The People of the State of California v. Marc*
21 *William Garcia* (Super. Ct. Los Angeles County, 2012, No. SA082066.)

22 b. Acts Involving Dishonesty, Fraud, Deceit, or Corruption: Respondent is subject to
23 disciplinary action under section 4301, subdivision (f), in that on or about October 1, 2012,
24 Respondent committed acts involving dishonesty, fraud, deceit, or corruption with the intent to
25 substantially benefit himself, or substantially injure another. (*The People of the State of*
26 *California v. Marc William Garcia* (Super. Ct. Los Angeles County, 2012, No. SA082066.)

27 c. Unprofessional Conduct/ Violation of Licensing Chapter: Respondent is subject to
28 disciplinary action under section 4301, (o), in that Respondent committed acts of unprofessional

1 conduct and/ or violated provisions of the licensing chapter. (*The People of the State of California*
2 *v. Marc William Garcia* (Super. Ct. Los Angeles County, 2012, No. SA082066.)

3 ORDER

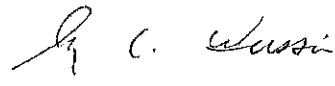
4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 67497, heretofore
5 issued to Respondent Marc William Garcia, is revoked.

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

10 This Decision shall become effective on July 11, 2014.

11 It is so ORDERED June 11, 2014.

12 BOARD OF PHARMACY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA

15 By 
16 STAN C. WEISSER
17 Board President

18 51518343.DOC
19 DOJ Matter ID:LA2013509642

20 Attachment:
21 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 MARC D. GREENBAUM
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3 LESLIE A. WALDEN
Deputy Attorney General
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4709

12 **MARC WILLIAM GARCIA**
13 3992 Berryman Ave.
Los Angeles, CA 90066

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 67497

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 February 22, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 67497 to Marc William Garcia (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 February 28, 2014, unless renewed.

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.

1 STATUTORY PROVISIONS

2 4. Section 490 states, in pertinent part:

3 "(a) In addition to any other action that a board is permitted to take against a licensee, a
4 board may suspend or revoke a license on the ground that the licensee has been convicted of a
5 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
6 or profession for which the license was issued.

7 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
8 discipline a licensee for conviction of a crime that is independent of the authority granted under
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the licensee's license was issued.

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states:

20 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 operation of law or by order or decision of the board or a court of law, the placement of a license
22 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
23 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
24 proceeding against, the licensee or to render a decision suspending or revoking the license."

25 7. Section 4301 states, in pertinent part:

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

1

2 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
4 whether the act is a felony or misdemeanor or not.

5

6 "(I) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
8 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
9 substances or of a violation of the statutes of this state regulating controlled substances or
10 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
11 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
12 The board may inquire into the circumstances surrounding the commission of the crime, in order
13 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
14 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
15 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
16 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
17 of this provision. The board may take action when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal or when an order granting probation is made
19 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
20 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
21 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
22 indictment.

23

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

28 ///

1 **REGULATORY PROVISIONS**

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

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of a Substantially Related Crime)**

16 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
18 Respondent was convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician as follows:

20 a. On or about October 22, 2012, after pleading nolo contendere, Respondent was
21 convicted of two felony counts of violating Penal Code section 459 [second degree commercial
22 burglary] in the criminal proceeding entitled *The People of the State of California v. Marc*
23 *William Garcia* (Super. Ct. Los Angeles County, 2012, No. SA082066.) The Court sentenced
24 Respondent to serve 6 days in Los Angeles County jail and placed him on 3 years probation, with
25 terms and conditions:

26 b. The circumstances surrounding the conviction are that on or about October 1, 2012,
27 Respondent entered a Best Buy in El Segundo, CA, selected a camera and concealed it in his
28 pants. When the El Segundo Police Department officer asked Respondent if he had a stolen

1 camera in his pants, he denied it. During a search of his person, the officer found a Canon digital
2 camera and a white item used to remove security devices from store products. Respondent was
3 subsequently arrested.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty, Fraud, Deceit, or Corruption)**

6 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
7 that on or about October 1, 2012, Respondent committed acts involving dishonesty, fraud, deceit,
8 or corruption with the intent to substantially benefit himself, or substantially injure another.
9 Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph
10 10, subparagraph (b), as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

13 12. Respondent is subject to disciplinary action under section 4301, (o), in that
14 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
15 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
16 in paragraphs 10 through 11, inclusive, as though set forth fully.

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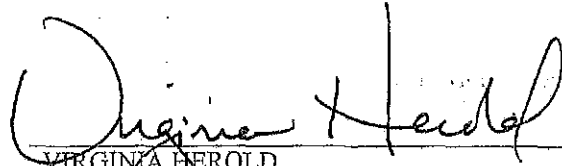
PRAYER

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 67497, issued to Marc William Garcia;
2. Ordering Marc William 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:

12/2/13



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

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mc (8/14/13)