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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. 4732

13 **EDWIN S. GARCIA**  
14 22031 Schoolcraft  
Canoga Park, CA 91303

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

15 **Pharmacy Technician License No. TCH**  
16 **43036**

17 Respondent.

18  
19 **FINDINGS OF FACT**

20 1. On or about February 3, 2015, Complainant Virginia K. Herold, in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
22 filed Accusation No. 4732 against Edwin S. Garcia (Respondent) before the Board of Pharmacy.  
23 The Accusation is attached as Exhibit A.

24 2. On February 26, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician  
25 License No. TCH 43036 to Respondent. The Pharmacy Technician Registration was in full force  
26 and effect at all times relevant to the charges brought herein and expired on February 28, 2014.

27 3. On March 3, 2015, copies of Accusation No. 4732, Statement to Respondent, Notice  
28 of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,

1 11507.6, and 11507.7) were sent to Respondent's address of record by Certified and First Class  
2 Mail. Pursuant to Business and Professions Code section 136, Respondent is required to report  
3 and maintain his address of record with the Board. Respondent's address of record was and is  
4 22031 Schoolcraft, Canoga Park, CA 91303.

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

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

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

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
12 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
13 4732.

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

15 (a) If the respondent either fails to file a notice of defense or to appear at the  
16 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  
17 respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board finds  
19 Respondent is in default. The Board will take action without further hearing and, based on the  
20 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
21 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
22 file at the Board's offices regarding the allegations contained in Accusation No. 4732, finds that  
23 the charges and allegations in Accusation No. 4732, are separately and severally, found to be true  
24 and correct by clear and convincing evidence.

25 9. Taking official notice of its own internal records and Exhibit 3 of the Default  
26 Decision Investigatory Evidence Packet, pursuant to Business and Professions Code section  
27 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is  
28 \$4,216.50.

**DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Edwin S. Garcia has subjected his Pharmacy Technician License No. TCH 43036 to discipline.

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

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

a. Violating Code section 4301 (h), (j), and (o), in conjunction with Health and Safety Code section 11171 and 11351, for unprofessional conduct in that Respondent furnished controlled substance to himself or another without a valid prescription;

b. Violating Code section 4301(j) and (o), Code section 4060, in conjunction with Health and Safety Code section 11350, in that Respondent possessed, conspired to possess, or assisted in or abetted possession of dangerous drugs and controlled substances without a valid prescription;

c. Violating Code section 4301(p) and (o), and Code section 4060 for unprofessional conduct in that Respondent committed acts that would have warranted a denial of a license.

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**ORDER**

IT IS SO ORDERED that Pharmacy Technician License No. TCH 43036, heretofore issued to Respondent Edwin S. Garcia, is revoked.

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

This Decision shall become effective on October 16, 2015.

It is so ORDERED September 16, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.  
Board President

Attachment:  
Exhibit A: Accusation

## **Exhibit A**

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 KRITHTHIKA VASUDEVAN  
Deputy Attorney General  
4 State Bar No. 247590  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2540  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4732

12 **EDWIN S. GARCIA**  
22031 Schoolcraft  
13 Canoga Park, CA 91303

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH 43036

15 Respondent.

16  
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 (Board).

21 2. On or about February 26, 2002, the Board issued Pharmacy Technician Registration  
22 No. TCH 43036 to Edwin S. Garcia (Respondent). The Pharmacy Technician Registration was in  
23 full force and effect at all times relevant to the charges brought herein and expired on February  
24 28, 2014, and has not been 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 (Code) unless otherwise  
28 indicated.

4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or revoked.”

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY PROVISIONS

6. Section 4301 of the Code states:

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

• • • •

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 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.

• • • •

(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 of the United States regulating controlled substances and dangerous drugs.

• • • •

(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 another state or federal regulatory agency.

• • • •

(p) Actions or conduct that would have warranted denial of a license.

• • • •

1       7.    Section 4021 of the Code states:

2        "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
3   1153) of Division 10 of the Health and Safety Code."

4       8.    Section 4022 of the Code states

5        "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
6   self-use in humans or animals, and includes the following:

7        (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
8   without prescription," "Rx only," or words of similar import.

9        (b) Any device that bears the statement: "Caution: federal law restricts this  
10   device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
11   import, the blank to be filled in with the designation of the practitioner licensed to use  
12   or order use of the device.

13       (c) Any other drug or device that by federal or state law can be lawfully  
14   dispensed only on prescription or furnished pursuant to Section 4006.

15       9.    Section 4059, subdivision (a), of the Code states:

16        A person may not furnish any dangerous drug, except upon the prescription of a  
17   physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant  
18   to Section 3640.7. A person may not furnish any dangerous device, except upon the  
19   prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
20   naturopathic doctor pursuant to Section 3640.7.

21       10.   Section 4060 of the Code states:

22        No person shall possess any controlled substance, except that furnished to a  
23   person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or  
24   furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to  
25   Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician  
26   assistant pursuant to Section 3502.1. This section shall not apply to the possession of  
27   any controlled substance by a manufacturer, wholesaler, pharmacy, physician,  
28   podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or  
  physician assistant, when in stock in containers correctly labeled with the name and  
  address of the supplier or producer.

  Nothing in this section authorizes a certified nurse-midwife, a nurse  
  practitioner, or a physician assistant to order his or her own stock of dangerous drugs  
  and devices.

  11.   Health and Safety Code section 11171 provides that "No person shall prescribe,  
  administer, or furnish a controlled substance except under the conditions and in the manner  
  provided by this division.



1       12. Health and Safety Code section 11350, subdivision (a), states "Except as otherwise  
2 provided in this division, every person who possesses any controlled substance specified in  
3 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph  
4 (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or  
5 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or any controlled substance  
6 classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written  
7 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state,  
8 shall be punished by imprisonment in the state prison.

9       13. Health and Safety Code section 11351 states "Except as otherwise provided in this  
10 division, every person who possesses for sale or purchases for purposes of sale any controlled  
11 substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14),  
12 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or  
13 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or any controlled substance  
14 classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment  
15 pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

#### 16                   REGULATORY PROVISIONS

17       14. California Code of Regulations, title 16, section 1770, states:

18               For the purpose of denial, suspension, or revocation of a personal or facility  
19 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
20 Professions Code, a crime or act shall be considered substantially related to the  
21 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.

#### 22                   CONTROLLED SUBSTANCE/DANGEROUS DRUG

23       15. Section 4021 of the Code states:

24               "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
25 11053) of Division 10 of the Health and Safety Code."

26       16. Section 4022 of the Code states, in pertinent part:

27               "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,  
28 except veterinary drugs that are labeled as such, and including the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

• • • •

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

17. The following drugs are referenced herein:

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER Code Section 4022	CONTROLLED SUBSTANCE PER Health and Safety Code (HSC)	INDICATION FOR USE
Norco	Hydrocodone Acetaminophen (APAP)	Yes	HSC 11056 (e)(4)	Pain
Carisoprodol	Soma	No	No	Muscle Relaxer

## COST RECOVERY

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

## FACTUAL BACKGROUND

19. Costco Pharmacy, located at 21300 Roscoe Blvd, Canoga Park, California, hired Respondent on October 24, 2001.

20. Around the end of 2011, the Pharmacist-In -Charge (PIC) overheard Respondent talking on the phone with a person named "Liz." Shortly after the conversation, the PIC received the paperwork for an "OK" on a Norco prescription. The office representative who called in the prescription was also named "Liz."

21. The PIC processed the prescription, but set it aside. The following morning, the PIC called the physician's office and asked for "Liz." She was informed that no "Liz" worked there.

22. The PIC called another location for the same doctor. That office, also, told her that no "Liz" worked there.

1       23. The PIC reviewed the patient's history and looked for the approval slips for all the  
2 Norco and Soma prescriptions. Upon review, the PIC found that all the prescriptions for this  
3 patient were authorized by "Liz" and taken down by Respondent. She forwarded her notes to the  
4 Loss Prevention Office.

5       24. Costco Loss Prevention conducted an investigation into the matter. Through their  
6 investigation, they discovered that Respondent had created a fake patient profile, of "Carlos  
7 Gonzales." Using that fake patient, Respondent had filled prescriptions for Norco and Soma.  
8 Costco found Respondent had filed 58 fraudulent scripts in the name of "Carlos Gonzales" since  
9 October 31, 2009.

10       25. Respondent told the Costco investigators that he had been filing prescriptions for the  
11 fake patient for about six (6) months. He said he would take the medications that were filled in  
12 "Carlos Gonzales'" name from the store without paying for them, and sell them to his friends for  
13 \$600 per month. He agreed to pay Costco back \$1,449.55.

14       26. When the Board investigator questioned Respondent on why he stole the medications,  
15 he stated it was for self-use and to sell to friends.

16       27. When the Board investigator conducted an audit on the number of Norco pills Costco  
17 had on hand from May 1, 2009 to December 26, 2011, the investigator found that Costco was  
18 missing 846 pills.

19                                   **FIRST CAUSE FOR DISCIPLINE**

20                   **(Unprofessional Conduct – Furnishing of Controlled Substance(s))**

21       28. Respondent is subject to disciplinary action under Code section 4301, subdivisions  
22 (h), (j) and (o), and Code section 4059, in conjunction with Health and Safety Code section 11171  
23 and Health and Safety Code section 11351, in that Respondent furnished to himself or another  
24 without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of,  
25 controlled substances or dangerous drugs. Complainant refers to and by this reference  
26 incorporates the allegations set forth above in paragraphs 17 through 25, inclusive, as though set  
27 forth fully.

28    //

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 29. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
4 and (o), on the grounds of unprofessional conduct, in that Respondent committed acts involving  
5 moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this  
6 reference incorporates the allegations set forth above in paragraphs 17 through 25, inclusive, as  
7 though set forth fully.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Possession of Dangerous Drugs and Controlled Substances Without a Valid Prescription)**

10 30. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)  
11 and (o), and Code Section 4060, in conjunction with Health and Safety Code section 11350,  
12 subdivision (a), in that Respondent possessed, conspired to possess, or assisted in or abetted  
13 possession of dangerous drugs and controlled substances without a valid prescription.  
14 Complainant refers to and by this reference incorporates the allegations set forth above in  
15 paragraphs 17 through 25, inclusive, as though set forth fully.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Acts Would Warrant Denial of License)**

18 31. Respondent is subject to disciplinary action under Code section 4301, subdivision (p)  
19 and (o), and Code Section 4060, in that Respondent committed acts that would have warranted a  
20 denial of a license. Complainant refers to and by this reference incorporates the allegations set  
21 forth above in paragraphs 17 through 26, inclusive, as though set forth fully.

22 **PRAYER**

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

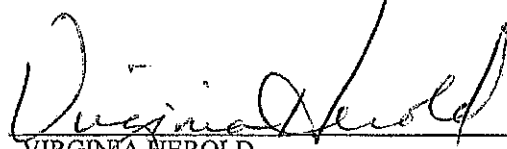
25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 43036,  
26 issued to Edwin S. Garcia;  
27  
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1           2.     Ordering Edwin S. Garcia to pay the Board of Pharmacy the reasonable costs of the  
2 investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3;

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

5  
6  
7 DATED:

2/3/15



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

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