

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

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

In the Matter of the Accusation Against:  
  
**GOVITO NEUPTALY GARCIA**  
1146 W. 10<sup>th</sup> Street  
San Bernardino, CA 92411  
  
**Pharmacy Technician Registration No. TCH  
106664**  
  
Respondent.

Case No. 4786

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about February 18, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 4786 against Govito Neuptaly Garcia (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 24, 2011, the Board issued Pharmacy Technician Registration No. TCH 106664 to Respondent. The Pharmacy Technician Registration expired on March 31, 2014, and has not been renewed.

3. On or about March 7, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4786, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

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

4 11436 W. 10<sup>th</sup> St.  
5 San Bernardino, CA 92411.

6 4. On or about March 18, 2014, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "Undeliverable As Addressed No Forwarding Order on File" The  
8 address on the documents was the same as the address on file with the Board. Respondent failed  
9 to maintain an updated address with the Board and the Board has made attempts to serve the  
10 Respondent at the address on file. Respondent has not made himself available for service and  
11 therefore, has not availed himself of his right to file a notice of defense and appear at hearing.

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

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

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
20 4786.

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

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

26 8. Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
taking official notice of all the investigatory reports, exhibits and statements contained therein on  
file at the Board's offices regarding the allegations contained in Accusation No. 4786, finds that

1 the charges and allegations in Accusation No. 4786, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 9. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$2,282.50 as of July 23, 2014.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Govito Neuptaly Garcia has  
8 subjected his Pharmacy Technician Registration No. TCH 106664 to discipline.

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

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

13 (a) Business and Professions Code section 4301, in accordance with California Code of  
14 Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent  
15 has committed an act substantially related to the qualifications, functions, and duties of a  
16 pharmacy technician as follows:

17 (b) Respondent is subject to disciplinary action under section 4300 and 4301, subdivision  
18 (k), on the grounds of unprofessional conduct, in that Respondent was convicted of crimes  
19 involving the consumption of alcohol.

20 (c) Respondent is subject to disciplinary action under section 4300 and 4301, subdivision  
21 (h), on the grounds of unprofessional conduct, in that on or about September 28, 2012, and  
22 November 30, 2012, Respondent used alcohol to an extent or in a manner dangerous or injurious  
23 to himself or others when he operated a vehicle while having 0.08% and more of alcohol in his  
24 blood.

25 **ORDER**

26 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 106664, heretofore  
27 issued to Respondent Govito Neuptaly Garcia, is revoked.

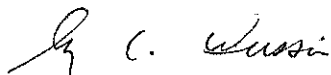
28

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

5 This Decision shall become effective on November 3, 2014.

6 It is so ORDERED October 2, 2014.

7 BOARD OF PHARMACY  
8 DEPARTMENT OF CONSUMER AFFAIRS  
9 STATE OF CALIFORNIA

10 By 

11 STAN C. WEISSER  
12 Board President

13  
14  
15  
16  
17  
18 Attachment:  
19 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**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:	Case No. 4786
12 <b>GOVITO NEUPTALY GARCIA</b>	<b>A C C U S A T I O N</b>
13 1146 W. 10 <sup>th</sup> Street	
14 San Bernardino, CA 92411	
15 <b>Pharmacy Technician Registration No. TCH</b>	
16 <b>106664</b>	
17 Respondent.	

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the  
21 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
- 22 2. On or about February 24, 2011, the Board issued Pharmacy Technician Registration No.  
23 TCH 106664 to Govito Neuptaly Garcia (Respondent). The Pharmacy Technician Registration was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on March 31,  
25 2014, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following laws.  
28 All section references are to the Business and Professions Code unless otherwise indicated.



1 This section shall not be construed to apply to any drug diversion program operated by any  
2 agency established under Division 2 (commencing with Section 500) of this code, or any initiative act  
3 referred to in that division."

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

6 8. Section 4300.1 states:

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

12 9. Section 4301 states, in pertinent part:

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

16 . . . .

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

22 . . . .

23 "(k) The conviction of more than one misdemeanor or any felony involving the use,  
24 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination  
25 of those substances.

26 "(l) The conviction of a crime substantially related to the qualifications, functions,  
27 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled



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

14 . . . .

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

19 **REGULATORY PROVISIONS**

20 10. California Code of Regulations, title 16, section 1770, states:

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

27 //

28 //

1 COST RECOVERY

2 11. Section 125.3 provides, in pertinent part, that the Board may request the administrative  
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing act  
4 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with  
5 failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case  
6 settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

7 FIRST CAUSE FOR DISCIPLINE

8 (Conviction of Substantially Related Crimes)

9 12. Respondent has subjected his pharmacy technician registration to discipline under Code  
10 section 490, Code section 4301 (l), and (o), in accordance with California Code of Regulations, Title  
11 16, section 1770, for unprofessional conduct because Respondent was convicted of crimes  
12 substantially related to the qualifications, functions or duties of a pharmacy technician which to a  
13 substantial degree evidence his present and potential unfitness to practice in a manner consistent with  
14 the public health, safety, or welfare. The conviction is as follows:

15 a. On or about December 6, 2012, after pleading guilty, Respondent was convicted of one  
16 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having  
17 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of*  
18 *the State of California v. Govito Neuptaly Garcia* (Super. Ct. San Bernardino County, 2012, No.  
19 TSB1202573.) The Court sentenced Respondent to three (3) years summary probation, ordered him  
20 to serve one (1) day in San Bernardino County Jail, finish an alcohol program, and pay fines and fees.

21 b. On or about September 28, 2012, a California Highway Patrol officer stopped  
22 Respondent's car after the officer saw Respondent run a red light. While speaking to Respondent, the  
23 officer noticed Respondent emitted a strong odor of alcohol, had red watery eyes, and slurred speech.  
24 The officer asked Respondent if he had consumed any alcoholic beverages prior to driving.  
25 Respondent stated, "Yes, I had two Dos XX." During the booking procedure, Respondent submitted  
26 to a breath test that resulted in a breath alcohol content level of 0.15% on the first and second reading.

27 //

28 //



1 alteration with the security guards at the night club. He stated he had four (4) Dos Equis prior to  
2 driving his car. During the booking procedure, Respondent submitted to a blood test that resulted in a  
3 blood alcohol content level of 0.22%.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Convictions Involving Alcohol)**

6 14. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (k),  
7 on the grounds of unprofessional conduct, in that Respondent was convicted of crimes involving the  
8 consumption of alcohol. Complainant refers to and by this reference incorporates the allegations set  
9 forth above in paragraphs 12 and 13, inclusive, as though set forth fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 15. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (h),  
13 on the grounds of unprofessional conduct, in that on or about September 28, 2012, and November 30,  
14 2012, Respondent used alcohol to an extent or in a manner dangerous or injurious to himself or others  
15 when he operated a vehicle while having 0.08% and more of alcohol in his blood. Complainant refers  
16 to and by this reference incorporates the allegations set forth above in paragraphs 12 and 13,  
17 inclusive, as though set forth fully.

18 **DISCIPLINARY CONSIDERATIONS**

19 16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant,  
20 as follows:

21 a. On or about August 26, 2009, Respondent was convicted of one misdemeanor count of  
22 violating Vehicle Code section 14601.2, subdivision (a) [driving when privilege suspended or  
23 revoked for driving under the influence of alcoholic beverage or drug] in the criminal proceeding  
24 entitled *The People of the State of California v. Govito Garcia* (Super. Ct. Los Angeles County, 2009,  
25 No. 911097G.) The Court sentenced Respondent to three (3) years summary probation, ordered him  
26 to serve thirty-one (31) days in San Bernardino County Jail , and pay fines and fees.

27 b. The circumstances surrounding the conviction are that on or about May 7, 2009,  
28 Respondent drove a vehicle while his driving privileges were suspended or revoked.

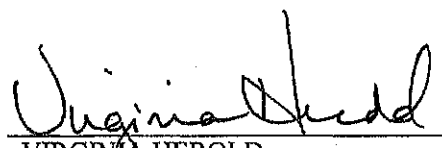
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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. Revoking or suspending Pharmacy Technician Registration No. TCH 106664, issued to Govito Neuptaly Garcia
2. Ordering Govito Neuptaly 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: 2/18/14

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

LA2013510004  
51455775.doc  
kv (2/11/14)