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8		RETHE
9	DEPARTMENT OF C	PHARMACY CONSUMER AFFAIRS
10		CALIFORNIA
11		G
12	In the Matter of the Accusation Against:	Case No. 5197
13		DEFAULT DECICION AND ODDED
14	LINDA LORENA GARCIA 13223 Leach St. Science CA 01242	DEFAULT DECISION AND ORDER
15	Sylmar, CA 91342 Pharmacy Technician Registration No. TCH	[Gov. Code, §11520]
16	49093	
17	Porpondent	
18	Respondent.	
19		
20		
21	<u>FINDING</u>	S OF FACT
22	1. On or about May 28, 2015, Complain	nant Virginia K. Herold, in her official capacity
23	as the Executive Officer of the Board of Pharma	cy, Department of Consumer Affairs, filed
24	Accusation No. 5197 against Linda Lorena Garc	ia (Respondent) before the Board of Pharmacy.
25	(Accusation attached as Exhibit A.)	
26	2. On or about March 2, 2004, the Boar	rd of Pharmacy (Board) issued Pharmacy
27	Technician Registration No. TCH 49093 to Resp	
28		
		1 ARCIA) DEFAULT DECISION & ORDER Case No. 5197
		,

1 2	was in full force and effect at all times relevant to the charges brought in Accusation No. 5197 and expired on August 31, 2015 and has not been renewed.
2	and expired on August 31, 2015 and has not been renewed.
3	3. On or about June 24, 2015, Respondent was served by Certified and First Class Mail
4	copies of the Accusation No. 5197, Statement to Respondent, Notice of Defense, Request for
5	Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6	Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7	is required to be reported and maintained with the Board. Respondent's address of record was
8	and is:
9	13223 Leach St.
10	Sylmar, CA 91342.4. Service of the Accusation was effective as a matter of law under the provisions of
11	Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12	124.
13	5. On or about August 10, 2015, the aforementioned documents were returned by the
14	U.S. Postal Service marked "Unclaimed." The address on the documents was the same as the
15	address on file with the Board. Respondent failed to maintain an updated address with the Board
16	and the Board has made attempts to serve the Respondent at the address on file. Respondent has
17	not made herself available for service and therefore, has not availed herself of her right to file a
18	notice of defense and appear at hearing.
19	6. Government Code section 11506 states, in pertinent part:
20	(c) The respondent shall be entitled to a hearing on the merits if the respondent
21	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
22	constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
23	7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24	the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5197.
25	8. California Government Code section 11520 states, in pertinent part:
26	(a) If the respondent either fails to file a notice of defense or to appear at the
27 ⁻ 28	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
20	respondent. 2
	(LINDA LORENA GARCIA) DEFAULT DECISION & ORDER Case No. 5197

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. 5197, finds that
6	the charges and allegations in Accusation No. 5197, 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 \$8,432.50 as of March 16, 2016.
11	DETERMINATION OF ISSUES
12	1. Based on the foregoing findings of fact, Respondent Linda Lorena Garcia has
13	subjected her Pharmacy Technician Registration No. TCH 49093 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> : Respondent Violated Business and Professions Code
19	section 4301, subdivision (f) in that she is guilty of unprofessional conduct when she committed
20	acts of moral turpitude, dishonesty, fraud, deceit, or corruption in the course of relations as a
21	licensee or otherwise.
22-	b. <u>Possession of Drugs through Forged Prescription</u> : Respondent Violated
23	Business and Professions Code section 4324 subdivisions (a) and (b), as well as section 4301
24	subdivision (j) in that Respondent obtained drugs by falsely signing the name of another or by
25	falsely making, altering, forging, uttering, publishing, passing or attempting to pass as genuine
26	any prescription for any drug.
27	c. <u>False Representation</u> . Respondent Violated Business and Professions Code
28	section 4301 subdivision (g) as Respondent, a licensee, is guilty of unprofessional conduct in that
	3 (LINDA LORENA GARCIA) DEFAULT DECISION & ORDER Case No. 5197

1	she made or signed a certificate or document that falsely represented the existence or		
2	nonexistence of a state of facts.		
3	d. <u>Unprofessional Conduct- Falsifying Documents</u> : Respondent Violated		
4	Business and Professions Code section 4301 subdivision (g) as Respondent, a licensee, is guilty		
5	of unprofessional conduct in that she made or signed a certificate or document that falsely		
6	represented the existence or nonexistence of a state of facts.		
7	ORDER		
8	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 49093, heretofore		
9	issued to Respondent Linda Lorena Garcia, is revoked.		
10	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a		
11	written motion requesting that the Decision be vacated and stating the grounds relied on within		
12	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
13	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.		
14	This Decision shall become effective at 5:00 p.m. on June 6, 2016.		
15	It is so ORDERED on May 6, 2016.		
16	BOARD OF PHARMACY		
17	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
18	STATE OF CALIFORNIA		
19 20	Aghcyotig		
21	By		
22	Amy Gutierrez, Pharm.D.		
23	Board President		
24	52019796.DOC DOJ Matter ID:LA2014511799		
25	Attachment:		
26	Exhibit A: Accusation		
27			
28			
	4 (LINDA LORENA GARCIA) DEFAULT DECISION & ORDER Case No. 5197		
	(LINDA LORENA GARCIA) DELAOLT DECISION & ORDER Case NO. 5197		

Exhibit A

Accusation

•	4. 1	
	2	
	1	Kamala D. Harris
	2	Attorney General of California MARC D. GREENBAUM
	3	Supervising Deputy Attorney General LESLIE A. WALDEN
	4	Deputy Attorney General State Bar No. 196882
	5	300 So. Spring Street, Suite 1702
		300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-3465
	6	Facsimile: (213) 897-2804 Attorneys for Complainant
	7	BEFORE THE
	8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
	9	STATE OF CALIFORNIA
	10	
	11	In the Matter of the Accusation Against: Case No. 5197
	12	LINDA LORENA GARCIA
	13	13223 Leach St. Sylmar, CA 91342A C C U S A T I O N
	14	Pharmacy Technician Registration No. TCH 49093
	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.
<u></u>	-21-	2. On or about March 2, 2004, the Board of Pharmacy-issued Pharmacy Technician
	22	Registration Number TCH 49093 to Linda Lorena Garcia (Respondent). The Pharmacy
	23	Technician Registration was in full force and effect at all times relevant to the charges brought
	24	herein and will expire on August 31, 2015, unless renewed.
	25	JURISDICTION
	26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
	27	Consumer Affairs, under the authority of the following laws. All section references are to the
	28	Business and Professions Code unless otherwise indicated.
		1
		Accusation

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1	4. Section 4300 of the Code states:
2	"(a) Every license issued may be suspended or revoked.
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4	5. Section 4301 of the Code states:
5	"The board shall take action against any holder of a license who is guilty of unprofessional
6	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
7	Unprofessional conduct shall include, but is not limited to, any of the following:
8	\$\$ * * * *
9	"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
10	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
11	whether the act is a felony or misdemeanor or not.
12	(g) Knowingly making or signing any certificate or other document that falsely represents
13	the existence or nonexistence of a state of facts.
14	\$\$ >> \$\$
15	(j) The violation of any of the statutes of this state, of any other state, or of the United
16	States regulating controlled substances and dangerous drugs."
17	· · · · · · · · · · · · · · · · · · ·
18	"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
19	violation of or conspiring to violate any provision or term of this chapter or of the applicable
20	federal and state laws and regulations governing pharmacy, including regulations established by
21	-the board or by any other state or federal-regulatory agency.
22	44 - 33
23	6. Section 4323 of the Code states:
24	"Every person who, in order to obtain any drug, falsely represents himself or herself to be
25	physician or other person who can lawfully prescribe the drug, or falsely represents that he or sh
26	is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic
27	communication with a pharmacist, shall be punished by imprisonment in the county jail for not
28	more than one year."
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7. Section 4324 of the Code states:

2 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
3 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
4 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
5 state prison, or by imprisonment in the county jail for not more than one year.

6 "(b) Every person who has in his or her possession any drugs secured by a forged
7 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the
8 county jail for not more than one year."

8. Section 11157 of the Health and Safety Code states:

"No person shall issue a prescription that is false or fictitious in any respect."

COST RECOVERY

9. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

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STATEMENT OF FACTS

Respondent was employed by Ralphs Pharmacy located at 12842 Ventura Boulevard, 10. 17 Studio City, CA 91604 for approximately six (6) years up until August 2, 2013 when she was 18 terminated from her employment for theft, dishonesty and probable use of a controlled substance. 19 From in or about June 2012 through July 2013, while employed at Ralphs Pharmacy, Respondent 20unlawfully and fraudulently accessed her own electronic prescription profile and reversed refills 21of her prescription for Butalbital/APAP/Caffeine on approximately forty (40) separate dates for a 22 total of approximately 1,286 tablets. The prescribing physician did not authorize at least five (5) 23 of the prescriptions. The reversed prescriptions are as follows: 24

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Rx#	Drug	Filled	Reversed
4515141	Butalbital/APAP/Caffeine #50	7/13/2013	7/14/2013
4515001	Butalbital/APAP/Caffeine #20	7/8/2013	7/9/2013

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Accusation

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ν.		P*	- -		
1		4515001	Butalbital/APAP/Caffeine #40	7/1/2013	7/5/2013
2		4515001	Butalbital/APAP/Caffeine #30	6/28/2013	6/29/2013
3		4514840	Butalbital/APAP/Caffeine #20	6/21/2013	6/21/2013
4		4514840	Butalbital/APAP/Caffeine #45	6/14/2013	6/15/2013
5		4514614	Butalbital/APAP/Caffeine #30	5/24/2013	6/1/2013
6		4514614	Butalbital/APAP/Caffeine #30	5/30/2013	6/1/2013
7		4514280	Butalbital/APAP/Caffeine #50	4/29/2013	5/1/2013
8		4513986	Butalbital/APAP/Caffeine #60	4/15/2013	4/19/2013
9		4513986	Butalbital/APAP/Caffeine #60	4/10/2013	4/13/2013
10		4513453	Butalbital/APAP/Caffeine #24	3/15/2013	3/15/2013
11		4513453	Butalbital/APAP/Caffeine #60	2/28/2013	3/12/2013
12		4513453	Butalbital/APAP/Caffeine #70	2/14/2013	2/25/2013
13		4513453	Butalbital/APAP/Caffeine #20	2/12/2013	2/13/2013
14		4513453	Butalbital/APAP/Caffeine #50	2/06/2013	2/13/2013
15		4513453	Butalbital/APAP/Caffeine #20	2/09/2013	2/11/2013
16		4513061	Butalbital/APAP/Caffeine #15	1/15/2013	1/18/2013
17		4512793	Butalbital/APAP/Caffeine #25	12/27/2012	12/28/2012
18		4512793	Butalbital/APAP/Caffeine #11	12/27/2012	12/28/2012
.19		4512793	Butalbital/APAP/Caffeine #11	12/21/2012	12/27/2012
20		4512793	Butalbital/APAP/Caffeine #35	12/17/2012	12/27/2012
21		6858984	Butalbital/APAP/Caffeine #37	9/15/2012	9/19/2012
22		6858984	Butalbital/APAP/Caffeine #13	9/5/2012	9/19/2012
23		6858984	Butalbital/APAP/Caffeine #30	9/7/2012	9/9/2012
. 24		6858304	Butalbital/APAP/Caffeine #6	8/25/2012	8/29/2012
25		6858304	Butalbital/APAP/Caffeine #14	8/28/2012	8/29/2012
26		6856418	Butalbital/APAP/Caffeine #20	8/13/2012	8/28/2012
27		6856418	Butalbital/APAP/Caffeine #40	7/17/2012	7/20/2012

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6853753	Butalbital/APAP/Caffeine #30	5/29/2012	5/31/2012
6852408	Butalbital/APAP/Caffeine #4	5/15/2012	5/18/2012
6852408	Butalbital/APAP/Caffeine #60	5/07/2012	5/09/2012
6852408	Butalbital/APAP/Caffeine #16	5/4/2012	5/5/2012
6851521	Butalbital/APAP/Caffeine #50	4/18/2012	4/21/2012
6841596	Butalbital/APAP/Caffeine #30	10/01/2011	10/15/2011
6837330	Butalbital/APAP/Caffeine #10	6/21/2011	6/23/2011
6834698	Butalbital/APAP/Caffeine #20	4/20/2011	4/26/2011
6829330	Butalbital/APAP/Caffeine #60	12/28/2010	1/4/2010
6826816	Butalbital/APAP/Caffeine #60	12/10/2010	12/16/2010
6826816	Butalbital/APAP/Caffeine #10	12/2/2010	12/6/2010

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dishonesty)

11. Respondent is subject to disciplinary action under section 4301, subdivision (f) in that she is guilty of unprofessional conduct when she committed acts of moral turpitude, dishonesty, fraud, deceit, or corruption in the course of relations as a licensee or otherwise. The circumstances surrounding these violations are set for the in paragraph 10 above and are incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Possession of Drugs Obtained through Forged Prescription)

12. Respondent is subject to disciplinary action under section 4324 subdivisions (a) and (b), as well as section 4301 subdivision (j) in that Respondent obtained drugs by falsely signing the name of another or by falsely making, altering, forging, uttering, publishing, passing or attempting to pass as genuine any prescription for any drug. The circumstances surrounding these violations are set for the in paragraph 10 above and are incorporated herein as though set forth in full.

1	•	
	1	THIRD CAUSE FOR DISCIPLINE
	2	(False Representation of Self as Physician or Agent of Physician)
	3	13. Respondent is subject to disciplinary action under section 4323 in conjunction with
	4	Health and Safety Code section 11157 by obtaining or attempting to obtain any drug by falsely
	5	representing herself to be a physician or other person who can lawfully prescribe the drug, or
	6	falsely representing that she is acting on behalf of a person who can lawfully prescribe the drug, i
	7	a telephone or electronic communication with a pharmacist. The circumstances surrounding thes
	8	violations are set for the in paragraph 10 above and are incorporated herein as though set forth in
	9	full,
	10	FOURTH CAUSE FOR DISCIPLINE
	11	(Unprofessional Conduct - Falsifying Documentation)
	12	14. Respondent is subject to disciplinary action under section 4301 subdivision (g) as
	13	Respondent, a licensee, is guilty of unprofessional conduct in that she made or signed a certificat
	14	or document that falsely represented the existence or nonexistence of a state of facts. The
	15	circumstances surrounding these violations are set for the in paragraph 10 above and are
	16	incorporated herein as though set forth in full.
	17	PRAYER
	18	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged
	19	and that following the hearing, the Board of Pharmacy issue a decision:
	20	1. Revoking or suspending Pharmacy Technician Registration Number TCH 49093,
	-21-	-issued-to-Linda-Lorena Garcia;
	22	2. Ordering Linda Lorena Garcia to pay the Board of Pharmacy the reasonable costs of
	23	the investigation and enforcement of this case, pursuant to Business and Professions Code section
	24	125.3; and
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	27	, , , , , , , , , , , , , , , , , , , ,
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Taking such other and further action as deemed necessary and proper. 3. 5/28/15 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant LA2014511799 51670337.doc . Accusation