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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. 5197

13 **LINDA LORENA GARCIA**
14 **13223 Leach St.**
15 **Sylmar, CA 91342**
16 **Pharmacy Technician Registration No. TCH**
17 **49093**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

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21 **FINDINGS OF FACT**

22 1. On or about May 28, 2015, Complainant Virginia K. Herold, in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
24 Accusation No. 5197 against Linda Lorena Garcia (Respondent) before the Board of Pharmacy.
25 (Accusation attached as Exhibit A.)

26 2. On or about March 2, 2004, the Board of Pharmacy (Board) issued Pharmacy
27 Technician Registration No. TCH 49093 to Respondent. The Pharmacy Technician Registration
28

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 5197
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.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about August 10, 2015, the aforementioned documents were returned by the
15 U.S. Postal Service marked "Unclaimed." The address on the documents was the same as the
16 address on file with the Board. Respondent failed to maintain an updated address with the Board
17 and the Board has made attempts to serve the Respondent at the address on file. Respondent has
18 not made herself available for service and therefore, has not availed herself of her right to file a
19 notice of defense and appear at hearing.

20 6. Government Code section 11506 states, in pertinent part:

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

26 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
27 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5197.

28 8. California Government Code section 11520 states, in pertinent part:

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

9. 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 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. 5197, finds that the charges and allegations in Accusation No. 5197, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$8,432.50 as of March 16, 2016.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Linda Lorena Garcia has subjected her Pharmacy Technician Registration No. TCH 49093 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 Registration 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. Unprofessional Conduct: Respondent Violated Business and Professions Code 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.

b. Possession of Drugs through Forged Prescription: Respondent Violated Business and Professions Code 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.

c. False Representation. Respondent Violated Business and Professions Code section 4301 subdivision (g) as Respondent, a licensee, is guilty of unprofessional conduct in that

1 she made or signed a certificate or document that falsely represented the existence or
2 nonexistence of a state of facts.

3 d. Unprofessional Conduct- Falsifying Documents: 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
18 STATE OF CALIFORNIA

19 
20

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

Exhibit A

Accusation

(LINDA LORENA GARCIA)

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Attorneys for Complainant

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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5197

12 **LINDA LORENA GARCIA**
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Sylmar, CA 91342

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **49093**

16 Respondent.

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.

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 4. Section 4300 of the Code states:

2 "(a) Every license issued may be suspended or revoked.

3 ..."

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 "...."

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 a
25 physician or other person who can lawfully prescribe the drug, or falsely represents that he or she
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."

7. Section 4324 of the Code states:

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

"(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in the 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 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.

STATEMENT OF FACTS

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

| 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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|---------|------------------------------|------------|------------|
| 4515001 | Butalbital/APAP/Caffeine #40 | 7/1/2013 | 7/5/2013 |
| 4515001 | Butalbital/APAP/Caffeine #30 | 6/28/2013 | 6/29/2013 |
| 4514840 | Butalbital/APAP/Caffeine #20 | 6/21/2013 | 6/21/2013 |
| 4514840 | Butalbital/APAP/Caffeine #45 | 6/14/2013 | 6/15/2013 |
| 4514614 | Butalbital/APAP/Caffeine #30 | 5/24/2013 | 6/1/2013 |
| 4514614 | Butalbital/APAP/Caffeine #30 | 5/30/2013 | 6/1/2013 |
| 4514280 | Butalbital/APAP/Caffeine #50 | 4/29/2013 | 5/1/2013 |
| 4513986 | Butalbital/APAP/Caffeine #60 | 4/15/2013 | 4/19/2013 |
| 4513986 | Butalbital/APAP/Caffeine #60 | 4/10/2013 | 4/13/2013 |
| 4513453 | Butalbital/APAP/Caffeine #24 | 3/15/2013 | 3/15/2013 |
| 4513453 | Butalbital/APAP/Caffeine #60 | 2/28/2013 | 3/12/2013 |
| 4513453 | Butalbital/APAP/Caffeine #70 | 2/14/2013 | 2/25/2013 |
| 4513453 | Butalbital/APAP/Caffeine #20 | 2/12/2013 | 2/13/2013 |
| 4513453 | Butalbital/APAP/Caffeine #50 | 2/06/2013 | 2/13/2013 |
| 4513453 | Butalbital/APAP/Caffeine #20 | 2/09/2013 | 2/11/2013 |
| 4513061 | Butalbital/APAP/Caffeine #15 | 1/15/2013 | 1/18/2013 |
| 4512793 | Butalbital/APAP/Caffeine #25 | 12/27/2012 | 12/28/2012 |
| 4512793 | Butalbital/APAP/Caffeine #11 | 12/27/2012 | 12/28/2012 |
| 4512793 | Butalbital/APAP/Caffeine #11 | 12/21/2012 | 12/27/2012 |
| 4512793 | Butalbital/APAP/Caffeine #35 | 12/17/2012 | 12/27/2012 |
| 6858984 | Butalbital/APAP/Caffeine #37 | 9/15/2012 | 9/19/2012 |
| 6858984 | Butalbital/APAP/Caffeine #13 | 9/5/2012 | 9/19/2012 |
| 6858984 | Butalbital/APAP/Caffeine #30 | 9/7/2012 | 9/9/2012 |
| 6858304 | Butalbital/APAP/Caffeine #6 | 8/25/2012 | 8/29/2012 |
| 6858304 | Butalbital/APAP/Caffeine #14 | 8/28/2012 | 8/29/2012 |
| 6856418 | Butalbital/APAP/Caffeine #20 | 8/13/2012 | 8/28/2012 |
| 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 **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, in
7 a telephone or electronic communication with a pharmacist. The circumstances surrounding these
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 certificate
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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3. Taking such other and further action as deemed necessary and proper.

DATED:

5/28/15

Virginia Herold

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

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