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

In the Matter of the Accusation Against:

Case No. 5609

**RUBEN GARCIA** 

4643 W. Vasser Fresno, CA 93722

Pharmacy Technician Registration No. TCH 136389

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on August 15, 2016.

It is so ORDERED on July 15, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

1	KAMALA D. HARRIS Attorney General of California					
2	KENT D. HARRIS					
3	Supervising Deputy Attorney General STANTON W. LEE					
4	Deputy Attorney General State Bar No. 203563					
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7	Facsimile: (916) 324-5567 E-mail: Stanton.Lee@doj.ca.gov					
8	Attorneys for Complainant					
Ì	BEFORE THE					
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS					
10	STATE OF C	CALIFORNIA				
11	In the Matter of the Accusation Against:	Case No. 5609				
12	RUBEN GARCIA					
13	4643 W. Vasser	STIPULATED SURRENDER OF				
14	Fresno, CA 93722	LICENSE AND ORDER				
15	Pharmacy Technician Registration No. TCH 136389					
16	Respondent.					
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19	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-					
20	entitled proceedings that the following matters are true:					
21	<u>PARTIES</u>					
22	1. Virginia Herold (Complainant) is the	e Executive Officer of the Board of Pharmacy.				
23	She brought this action solely in her official capacity and is represented in this matter by Kamala					
24	D. Harris, Attorney General of the State of California, by Stanton W. Lee, Deputy Attorney					
25	General.					
26	2. Ruben Garcia (Respondent) is repre-	senting himself in this proceeding and has chosen				
27	not to exercise his right to be represented by counsel.					
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3. On or about April 3, 2014, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 136389 to Ruben Garcia (Respondent). The Pharmacy Technician Registration expired on June 30, 2015, and has not been renewed.

#### **JURISDICTION**

4. Accusation No. 5609 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 24, 2016.

Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5609 is attached as Exhibit A and incorporated by reference.

#### ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 5609. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### **CULPABILITY**

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5609, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 136389 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

 <u>CONTINGENCY</u>

- 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

#### ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 136389, issued to Respondent Ruben Garcia, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

- 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 5609 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. Respondent shall not re-apply for licensure within the next three years of the effective date of the decision and order adopting Respondent's Stipulated Surrender of License and Order.
- 6. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$6,041.00 prior to issuance of a new or reinstated license.
- 7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 5609 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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## ACCEPTANCE 1 2 I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this 3 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to 4 be bound by the Decision and Order of the Board of Pharmacy. 5 6 DATED: (76-10-7016 7 8 Respondent 9 10 ENDORSEMENT 11 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted 12 for consideration by the Board of Pharmacy of the Department of Consumer Affairs. 13 Dated: 6/14/16 Respectfully submitted, 14 KAMALA D. HARRIS 15 Attorney General of California Kent D. Harris 16 Supervising Deputy Attorney General 17 18 STANTON W. LEE 19 Deputy Attorney General Attorneys for Complainant 20 21 22 SA2015105001 12290814.doc 23 24 25 26

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Exhibit A

Accusation No. 5609

1 .	KAMALA D. HARRIS				
2	Attorney General of California KENT D. HARRIS				
3	Supervising Deputy Attorney General STANTON W. LEE				
4	Deputy Attorney General State Bar No. 203563				
5	1300 I Street, Suite 125 P.O. Box 944255				
6	Sacramento, CA 94244-2550 Telephone: (916) 445-9921				
7	Facsimile: (916) 324-5567 E-mail: Stanton.Lee@doj.ca.gov				
8	Attorneys for Complainant				
9	BEFORE THE				
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS				
11	STATE OF CALIFORNIA				
12	In the Matter of the Accusation Against:	Case No. 5609			
13	RUBEN GARCIA				
14	4643 W. Vasser	ACCUSATION			
15	Fresno, CA 93722				
]	Pharmacy Technician Registration No. TCH 136389	,			
16	Respondent.				
17					
18					
19	Complainant alleges:				
20	<u>PARTIES</u>				
21	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity				
22	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.				
23-	2. On or about April 3, 2014, the Board of Pharmacy issued Pharmacy Technician				
24	Registration Number TCH 136389 to Ruben Garcia (Respondent). The Pharmacy Technician				
25	Registration expired on June 30, 2015, and has not been renewed.				
26	<u>JURISDICTION</u>				
27	3. This Accusation is brought before the Board of Pharmacy (Board), Department of				
28	Consumer Affairs, under the authority of the following laws:				
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## CALIFORNIA BUSINESS AND PROFESSIONS CODE Section 4300 states in pertinent part: (a) Every license issued may be suspended or revoked. (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods: 5 (1) Suspending judgment. (2) Placing him or her upon probation. (3) Suspending his or her right to practice for a period not exceeding one year. (4) Revoking his or her license. 10 (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper. 11 5. Section 4300.1 states: 12 The expiration, cancellation, forfeiture, or suspension of a board-issued 13 license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any 14 investigation of, or action or disciplinary proceeding against, the licensee or to render 15 a decision suspending or revoking the license. Section 4301 states in pertinent part: 16 17 The board shall take action against any holder of a license who is guilty of unprofessional conduct... Unprofessional conduct shall include, but is not limited to, 18 any of the following: 19 (a) Gross immorality. 20 (f) The commission of any act involving moral turpitude, dishonesty, fraud, 21 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. 22 23 (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug... to the extent or in a manner as to be dangerous or injurious to 24 oneself... 25 26

of the United States regulating controlled substances and dangerous drugs.

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(j) The violation of any of the statutes of this state, or any other state, or

- 11. Section 11170 states that 'No person shall prescribe, administer, or furnish a controlled substance for himself."
- 12. Section 11171 states, 'No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."
  - 13. Section 11173(a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

#### CONTROLLED SUBSTANCES

- 14. Hydrocodone/APAP is an opioid based narcotic and at the time of the investigation in this matter, was a schedule III controlled substance under Health and Safety Code, section 11056.
- 15. Hydromorphone, morphine, and oxycodone are opioid based narcotics and methylphenidate is a central nervous system stimulant. All are schedule II controlled substances under Health and Safety Code, section 11055.

#### COST RECOVERY

16. Business and Professions Code section 125.3 provides, in pertinent part, that a 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.

#### BACKGROUND

17. On February 11, 2015, the Board of Pharmacy (Board) received notification from S.H., HealthCare Business Partner for Target Store T-314, advising Complainant of the employment termination of Respondent pharmacy technician Ruben Garcia for "Theft of merchandise/Gross misconduct." Respondent's termination date was February 9, 2015.

<sup>&</sup>lt;sup>1</sup> On October 6, 2014, the Federal Government reclassified all hydrocodone products as Schedule II controlled substances.

18. On March 18, 2015, Target Store T-314 forwarded DEA Form 106 to the Board.

DEA Form 106 identified the controlled substances stolen by Respondent. The drugs stolen by Respondent included:

NDC NUMBER	BRAND NAME	TRADE NAME	DOSAGE	QUANTITY
00228287911	Roxicodone	Oxycodone HCL	30mg	150
00406324901	Dilaudid	Hydromorphone	8mg	120
00406833001	MS Contin	Morphine Sulfate ER	30mg	60
00603388728	Norco	Hydrocodone- APAP	10mg-325mg	952
00603389021	Norco	Hydrocodone- APAP	5mg-325mg	275
00603389121	Norco	Hydrocodone- APAP	7.5mg-325mg	378
64376064801	Vicodin	Hydrocodone- APAP	5mg-300mg	16
64720023710	Ritalin	Methylphenidate	5mg	30

- 19. On or about February 9, 2015, Executive Team Leader of Assets Protection for Target Store T-314, F.B investigated Respondent's at-work conduct after F.B. witnessed Respondent stealing store merchandise by taking items without paying. F.B. interviewed Respondent who admitted to diverting and stealing medication as well as general merchandise. Respondent confessed to diverting and stealing amoxicillin, Tamiflu, and oxycodone for his family and girlfriend. Respondent admitted to stealing the drug Norco, when it was designated as "Return to Stock" and that he had stolen an estimated 120 Norco pills. Respondent confessed to F.B. that he began using oxycodone himself and became addicted.
- 20. On or about February 9, 2015, Target Loss Prevention informed Pharmacist in Charge (PIC) A.Y. of the pharmacy in Target Store T-314 that Respondent diverted and stole medications from the pharmacy including methylphenidate, oxycodone, hydromorphone, and morphine sulfate. PIC A.Y. confirmed that the vendor invoice records, dispensing history, and store inventory were consistent with Respondent diverting and stealing hydrocodone products.
- 21. On February 9, 2015, Respondent completed an admission statement wherein he admitted to diverting and stealing controlled substances from the pharmacy at Target Store T-314.

- 22. On April 28, 2015, Board inspector D. P. met with Respondent. Respondent confessed to stealing antibiotics for his mother in November 2014 and stealing Norco for his girlfriend.
- 23. On March 18, 2015, Respondent was charged with one count of petty theft in the Superior Court for the County of Fresno, Case No. M15915439. On May 11, 2015, Respondent was convicted of petty theft based on his plea of no contest.

## FIRST CAUSE FOR DISCIPLINE

## (Diversion of Controlled Substances)

24. Respondent is subject to disciplinary action under section 4301, subsections (a), (f), (j), (o), and (p) of the Business and Professions Code and sections 11170 and 11173(a) of the Health and Safety Code in that during the course of Respondent's employment at the pharmacy in Target Store T-314, Respondent diverted and stole the controlled substances oxycodone, hydromorphone, morphine sulfate, hydrocodone, and methylphenidate, and self administered the drugs without a valid prescription as set forth in paragraphs 17-23.

## SECOND CAUSE FOR DISCIPLINE

# (Possession of a Controlled Substances Without a Valid Prescription)

25. Respondent is subject to disciplinary action under section 4060 of the Business and Professions Code and section 11350 of the Health and Safety Code in that during the course of his employment at the pharmacy in Target Store T-314, Respondent diverted, stole, and possessed the controlled substances oxycodone, hydromorphone, morphine sulfate, hydrocodone, and methylphenidate without a valid prescription as set forth in paragraphs 17-23.

#### THIRD CAUSE FOR DISCIPLINE

# (Administering Controlled Substances to Individuals without a Valid Prescription)

26. Respondent is subject to disciplinary action under sections 4059(a) and 4301(h) of the Business and Professions Code and sections 11170 and 11171 of the Health and Safety Code in that during the course of his employment at the pharmacy in Target Store T-314, Respondent diverted, stole, self administered, and furnished the controlled substances oxycodone,

hydromorphone, morphine sulfate, hydrocodone, and methylphenidate to himself and others who did not possess a valid prescription for those drugs as set forth in paragraphs 17-23.

### FOURTH CAUSE FOR DISCIPLINE

(Conviction of a Crime)

27. Respondent is subject to disciplinary action under section 4301(1) of the Business and Professions Code in that on May 11, 2015, Respondent was convicted of petty theft based on his plea of no contest, as set forth in paragraphs 17-23.

## PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 136389, issued to Ruben Garcia.;
- 2. Ordering Ruben Garcia to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/12/16

VIRGINIA HEROLD Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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