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

11 In the Matter of the Accusation Against:

Case No. 4075

12 **LILLIAN D. GARCIA**
13 **12802 Pearce Street**
14 **Garden Grove, CA 92643**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 12732**

Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about April 28, 1994, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 12732 to Lillian D. Garcia (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on November 30, 2011, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

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

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to evaluate
14 the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

18 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially
20 related to the qualifications, functions, or duties of the business or profession for which the
21 license was issued.

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8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. 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

1 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.

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3 (j) The violation of any of the statutes of this state, or any other state, or of the
4 United States regulating controlled substances and dangerous drugs.

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6 (l) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter. The record of conviction of a
8 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
9 States Code regulating controlled substances or of a violation of the statutes of this
10 state regulating controlled substances or dangerous drugs shall be conclusive
11 evidence of unprofessional conduct. In all other cases, the record of conviction shall
12 be conclusive evidence only of the fact that the conviction occurred. The board may
13 inquire into the circumstances surrounding the commission of the crime, in order to
14 fix the degree of discipline or, in the case of a conviction not involving controlled
15 substances or dangerous drugs, to determine if the conviction is of an offense
16 substantially related to the qualifications, functions, and duties of a licensee under this
17 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
18 contendere is deemed to be a conviction within the meaning of this provision. The
19 board may take action when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under
22 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
24 dismissing the accusation, information or indictment.

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

11. Section 4022 of the Code states

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

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

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

(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.

1 12. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
2 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
4 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

6 13. Section 4060 of the Code states:

7 No person shall possess any controlled substance, except that furnished to a person
8 upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
9 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
10 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section
11 3502.1. This section shall not apply to the possession of any controlled substance by a
12 manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified
13 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
14 correctly labeled with the name and address of the supplier or producer.

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

17 14. Title 16, California Code of Regulations, section 1769, states:

18 (b) When considering the suspension or revocation of a facility or a personal
19 license on the ground that the licensee or the registrant has been convicted of a crime,
20 the board, in evaluating the rehabilitation of such person and his present eligibility for
21 a license will consider the following criteria:

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or offense(s).

25 (4) Whether the licensee has complied with all terms of parole, probation,
26 restitution or any other sanctions lawfully imposed against the licensee.

27 (5) Evidence, if any, of rehabilitation submitted by the licensee.

28 15. Title 16, California Code of Regulations, section 1770, states:

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

1 **COST RECOVERY**

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

6 **DRUGS**

7 17. Hycotuss, a brand name for Hydrocodone with antitussive and expectorant, is a
8 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)
9 and is a dangerous drug pursuant to Business and Professions Code section 4022.

10 18. Phentermine, sold under the brand names Fastin and Adipex-P, is a Schedule IV
11 controlled substance as designated by Health and Safety Code section 11057(f)(4), and is a
12 dangerous drug pursuant to Business and Professions Code section 4022.

13 19. Tylenol #3 is a Schedule III controlled substance as designated by California
14 Health & Safety Code section 11056(e)(2), and is a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 20. Vicodin, a brand name for acetaminophen and hydrocodone bitartrate, is a
17 Schedule III controlled substance as designated by Health and Safety Code Section 11056(e)(4),
18 and is a dangerous drug pursuant to Business and Professions Code section 4022.
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21 **FIRST CAUSE FOR DISCIPLINE**

22 **(November 10, 2010 Criminal Conviction for Driving Under the Influence of Alcohol and/or**
23 **Drugs and Possession of Controlled Substances Without a Prescription on April 20, 2010)**

24 21. Respondent is subject to disciplinary action under sections 490 and 4301(I) of the
25 Code in that she was convicted of crimes that are substantially related to the qualifications, duties
26 and functions of a pharmacy technician. The circumstances are as follows:

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1 22. On or about November 10, 2010, in a criminal proceeding entitled *The People of*
2 *the State of California v. Lillian D. Garcia*, in the Orange County Superior Court, Case
3 No. 10CF2318 M A, Respondent was convicted on his plea of guilty of violating Vehicle Code
4 section 23152(a) (driving under the influence of alcohol and/or drugs), and Business and
5 Professions Code section 4060 (possession of controlled substances without a prescription),
6 misdemeanor. Pursuant to a plea agreement, the Court dismissed violation of Health and Safety
7 Code section 11352 (possession of a controlled substance) and Penal Code section 496(a)
8 (possession of stolen property).

9 23. The facts that led to the above conviction are that on April 20, 2010, at approximately
10 2000 hours, California Highway Patrol officers observed Respondent's vehicle weaving between
11 lanes on the freeway three times in approximately 15 seconds. Officers activated their emergency
12 lights and siren and directed Respondent to exit the freeway through the P.A. system.
13 Respondent exited at 17th Street in Santa Ana, CA. When officers contacted Respondent, they
14 asked her if she had been drinking and Respondent told officers that she did not consume
15 anything alcoholic but was feeling really tired. While talking to Respondent, officers observed
16 several empty prescription bottles with the labels torn off in the center console of the vehicle.
17 Officers asked Respondent if she had consumed any drugs prior to driving, and Respondent told
18 officers she had taken two Lorazepam tablets earlier in the day. Respondent reached in her purse
19 and retrieved a prescription bottle for Lorazepam that was prescribed to her. When officers
20 directed Respondent to exit the vehicle, she did so with an unsteady gait. Respondent failed the
21 field sobriety tests. Based on the officers' observations and Respondent's performance of the
22 field sobriety tests, Respondent was placed under arrest.

23 24. A search of Respondent's person incidental to the arrest revealed 33 pills of various
24 colors and sizes in Respondent's left front jean pocket. Respondent told officers she obtained the
25 pills from Costco Pharmacy in San Juan Capistrano where she worked as a pharmacy technician,
26 and that she had found them in the restroom of the warehouse. The pills were later identified as
27 14 Vicodin, 2 Tylenol III, 16 Phentermine and 1 Hycotussin. Respondent did not have a
28 prescription for the pills found on her person. Respondent provided a blood sample and was

1 transported and booked at the Orange County Jail. The blood sample tested positive for
2 Benzodiazepines and Opiates.

3 25. Respondent worked for Costco Pharmacy from March of 2009 until her termination
4 on April 27, 2010, for theft, dishonesty toward the company and for dishonesty during Costco's
5 Pharmacy investigation. An audit at Costco's pharmacy from February 8, 2010 until the date of
6 Respondent's arrest found the following:

7 **Hydrocodone/APAP 7.5/750** – The pharmacy was short 90 tablets since February 8, 2010.
8 Respondent was found to be in possession of 14 tablets at the time of her arrest.

9 **Phentermine 30mg** – The pharmacy was short 108 capsules from February 8, 2010.
10 Respondent was in possession of 16 capsules at the time of her arrest.

11 **Tylenol With Codeine** – The pharmacy was short 30 tablets from March 15, 2010.
12 Respondent was found in possession of 2 tablets at the time of her arrest.

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14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Commission of Acts Involving**
16 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

17 26. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
18 Code in that between or about March of 2009 and April 20, 2010, while working as a pharmacy
19 technician, Respondent stole controlled substances and dangerous drugs from her employer,
20 Costco Pharmacy, located in San Juan Capistrano, using fraud, deceit, and dishonesty, as detailed
21 in paragraphs 21-25, above, which are incorporated here by reference. Such conduct is
22 substantially related to the qualifications, duties, and functions of a pharmacy technician.

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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 12732, issued to Lillian D. Garcia
2. Ordering Lillian D. 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: _____

9/30/11

Virginia Herold

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

SD2011800671