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

11 In the Matter of the Accusation Against:

Case No. 4609

12 **JUDITH Y. GARCIA**
2201 Ivanhoe Drive
13 Oxnard, CA 93030

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 112357

15 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 November 7, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 112357 to Judith Y. Garcia (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2015, unless renewed.

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1 **JURISDICTION**

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

4 4. Section 4300.1 states:

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

10 **STATUTORY PROVISIONS**

11 5. Section 490 provides, in pertinent part, that a board may suspend revoke a license on
12 the grounds that the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, or duties of the business or profession for which the license was issued.

14 6. Section 492 states:

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

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

26 7. Section 4060 states, in pertinent part:

27 "No person shall possess any controlled substance, except that furnished to a person upon
28 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
2 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 28361.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to Section 4052 or 4052.2. This section shall not apply to the possession
5 of any controlled substance by a . . . pharmacy, pharmacist . . . when in stock in containers
6 correctly labeled with the name and address of the supplier or producer.”

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

9 9. Section 4301 states in pertinent part:

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

13

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

16 COST RECOVERY

17 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
18 law judge to direct a licentiate found to have committed a violation or violations of the licensing
19 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
20 case.

21 CONTROLLED SUBSTANCES/ DANGEROUS DRUGS

22 11. "Methamphetamine" is a Schedule II controlled substance as defined in Health and
23 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
24 Section 4022. It stimulates the central nervous system.

25 12. "Xanax" (generic – Alprazolam) is a depressant and a Schedule IV controlled
26 substance as designated by Health and Safety Code section 11057, subdivision (d)(1). It is
27 categorized as a dangerous drug pursuant to Section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Illegal Possession of a Controlled Substance(s)/ Dangerous Drug(s))**

3 13. Respondent is subject to disciplinary action under Sections 4300 and 4301,
4 subdivision (j), in conjunction with Section 4060, on the grounds of unprofessional conduct, in
5 that Respondent was in possession of a controlled substance(s) and/or dangerous drug(s), as
6 follows:

7 a. On or about July 7, 2012, during an investigation by the Ventura County
8 Sheriff's Department, Respondent was contacted. When Officers asked her for identification, she
9 was observed to be nervous and talkative. After two minutes of looking for her identification, the
10 officer asked if she had anything with her name and date of birth on it. Respondent provided a
11 Costco card. During a consent search of her personal belongings to locate her identification, the
12 officer found an "Altoids" can, which contained a small, clear, plastic zip-lock baggie that
13 contained a small amount of a white, crystal-like substance, which appeared to be
14 Methamphetamine. The officer also found a yellow pill with the ends cut off, that appeared to be
15 a Xanax, along with a rolled-up dollar bill and a round, metal mesh. When asked if the drugs
16 were hers, Respondent replied, "The drugs are not mine, but I knew they were in there."
17 Respondent admitted she did not have a prescription for Xanax.

18 b. Respondent was subsequently arrested for violating Health and Safety Code
19 Section 11377(A) [possession of a prescribed controlled substance] and Section 4060 [possession
20 of drug without a prescription]. During the booking process, Respondent was asked if she has
21 used the drugs located in the "Altoids" container. Respondent, after being advised of her Miranda
22 rights, claimed that she kept the drugs for someone else and denied the Xanax pill belonged to her
23 because she does not use Xanax. However, Respondent reiterated she had previously used drugs
24 from the "Altoids" container. She also admitted that she put the "Altoids" can in the plastic bag
25 when she left her vehicle, after the officer drove by her. A Ventura County Sheriff's Department
26 Officer conducted a presumptive test on the white, crystal-like substance, which weighed
27 approximately .03 grams (including packaging), and it tested positive for amphetamines.

28 c. Subsequently, on or about November 2, 2012, after pleading guilty to Count

1 One, the Court placed Respondent on a 24-month Deferred Entry of Judgment program for
2 violating Health and Safety Code Section 11377(a) [possession of a controlled substance
3 (Methamphetamine)], a felony, in the criminal proceeding entitled *The People of the State of*
4 *California v. Judith Yvonne Garcia* (Super. Ct. Ventura County, 2012, No. 2012024707). Count
5 Two, a misdemeanor violation of Section 4060, was dismissed. Respondent was ordered to report
6 immediately to the probation agency, to maintain regular employment, not to use or possess any
7 narcotics, dangerous drugs or controlled substances (without a prescription), to immediately
8 obtain drug counseling and participate until allowed to terminate by the court, and to pay various
9 fines and fees. In addition, Respondent was directed to return to the criminal court for a
10 Diversion Deferred Entry Review on October 2, 2014.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 14. Respondent is subject to disciplinary action under Sections 4300 and 4301,
14 subdivision (j), in that Respondent committed acts of unprofessional conduct. Complainant refers
15 to, and by this reference incorporates each of the allegations set forth above in Paragraph 13,
16 subparagraphs a through c, inclusive, as though set forth fully herein.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112357, issued
21 to Judith Y. Garcia;

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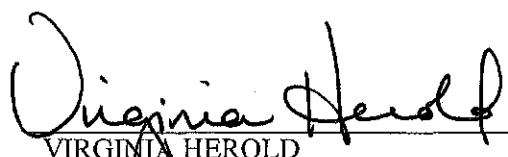
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1 2. Ordering Judith Y. Garcia to pay the Board the reasonable costs of the investigation
2 and enforcement of this case, pursuant to section 125.3; and

3 3. Taking such other and further action as deemed necessary and proper.

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DATED: 10/21/13



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

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