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

11 In the Matter of the Accusation Against:

Case No. 5609

12 **RUBEN GARCIA**

13 **4643 W. Vasser**  
14 **Fresno, CA 93722**

15 **Pharmacy Technician Registration No. TCH**  
16 **136389**

**ACCUSATION**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
28 Consumer Affairs, under the authority of the following laws:

**CALIFORNIA BUSINESS AND PROFESSIONS CODE**

1           4.    Section 4300 states in pertinent part:

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

3                           (b) The board shall discipline the holder of any license issued by the  
4 board, whose default has been entered or whose case has been heard by the board and  
5 found guilty, by any of the following methods:

6                           (1) Suspending judgment.

7                           (2) Placing him or her upon probation.

8                           (3) Suspending his or her right to practice for a period not exceeding one  
9 year.

10                          (4) Revoking his or her license.

11                          (5) Taking any other action in relation to disciplining him or her as the  
12 board in its discretion may deem proper.

13           5.    Section 4300.1 states:

14                          The expiration, cancellation, forfeiture, or suspension of a board-issued  
15 license by operation of law or by order or decision of the board or a court of law, the  
16 placement of a license on a retired status, or the voluntary surrender of a license by a  
17 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
18 investigation of, or action or disciplinary proceeding against, the licensee or to render  
19 a decision suspending or revoking the license.

20           6.    Section 4301 states in pertinent part:

21                          The board shall take action against any holder of a license who is guilty of  
22 unprofessional conduct. . . Unprofessional conduct shall include, but is not limited to,  
23 any of the following:

24                           (a) Gross immorality.

25                          ...

26                           (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
27 deceit, or corruption, whether the act is committed in the course of relations as a licensee or  
28 otherwise, and whether the act is a felony or misdemeanor or not.

29                          ...

30                           (h) The administering to oneself, of any controlled substance, or the use of any  
31 dangerous drug . . . to the extent or in a manner as to be dangerous or injurious to  
32 oneself . . .

33                          ...

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

36                          ...

1 (l) The conviction of a crime substantially related to the qualifications,  
2 functions, and duties of a licensee . . .

3 . . .

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

9 . . .

10 (p) Actions or conduct that would have warranted denial of a license."

11 7. Section 4059(a) states that, "A person may not furnish any dangerous drug, except  
12 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic  
13 doctor pursuant to Section 3640.7."

14 8. Section 4060 states, in pertinent part:

15 A person shall not possess any controlled substance, except that furnished to a  
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
18 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
19 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
20 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
21 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

22 9. Section 4022 states:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this  
28 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.

### HEALTH AND SAFETY CODE

10. Section 11007 states:

'Controlled substance,' unless otherwise specified, means a drug,  
substance, or immediate precursor which is listed in any schedule in Section 11054,  
11055, 11056, 11057, or 11058.

1 11. Section 11170 states that “No person shall prescribe, administer, or furnish a  
2 controlled substance for himself.”

3 12. Section 11171 states, “No person shall prescribe, administer, or furnish a controlled  
4 substance except under the conditions and in the manner provided by this division.”

5 13. Section 11173(a) states:

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

### 10 CONTROLLED SUBSTANCES

11 14. Hydrocodone/APAP is an opioid based narcotic and at the time of the investigation in  
12 this matter, was a schedule III controlled substance under Health and Safety Code, section  
13 11056.<sup>1</sup>

14 15. Hydromorphone, morphine, and oxycodone are opioid based narcotics and  
15 methylphenidate is a central nervous system stimulant. All are schedule II controlled substances  
16 under Health and Safety Code, section 11055.

### 17 COST RECOVERY

18 16. Business and Professions Code section 125.3 provides, in pertinent part, that a Board  
19 may request the administrative law judge to direct a licentiate found to have committed a  
20 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
21 investigation and enforcement of the case.

### 22 BACKGROUND

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

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

1 18. On March 18, 2015, Target Store T-314 forwarded DEA Form 106 to the Board.  
2 DEA Form 106 identified the controlled substances stolen by Respondent. The drugs stolen by  
3 Respondent included:

4 NDC NUMBER	BRAND NAME	TRADE NAME	DOSAGE	QUANTITY
5 00228287911	Roxicodone	Oxycodone HCL	30mg	150
6 00406324901	Dilaudid	Hydromorphone	8mg	120
7 00406833001	MS Contin	Morphine Sulfate ER	30mg	60
8 00603388728	Norco	Hydrocodone- APAP	10mg-325mg	952
9 00603389021	Norco	Hydrocodone- APAP	5mg-325mg	275
10 00603389121	Norco	Hydrocodone- APAP	7.5mg-325mg	378
11 64376064801	Vicodin	Hydrocodone- APAP	5mg-300mg	16
12 64720023710	Ritalin	Methylphenidate	5mg	30

13  
14 19. On or about February 9, 2015, Executive Team Leader of Assets Protection for  
15 Target Store T-314, F.B investigated Respondent's at-work conduct after F.B. witnessed  
16 Respondent stealing store merchandise by taking items without paying. F.B. interviewed  
17 Respondent who admitted to diverting and stealing medication as well as general merchandise.  
18 Respondent confessed to diverting and stealing amoxicillin, Tamiflu, and oxycodone for his  
19 family and girlfriend. Respondent admitted to stealing the drug Norco, when it was designated as  
20 "Return to Stock" and that he had stolen an estimated 120 Norco pills. Respondent confessed to  
21 F.B. that he began using oxycodone himself and became addicted.

22 20. On or about February 9, 2015, Target Loss Prevention informed Pharmacist in Charge  
23 (PIC) A.Y. of the pharmacy in Target Store T-314 that Respondent diverted and stole medications  
24 from the pharmacy including methylphenidate, oxycodone, hydromorphone, and morphine  
25 sulfate. PIC A.Y. confirmed that the vendor invoice records, dispensing history, and store  
26 inventory were consistent with Respondent diverting and stealing hydrocodone products.

27 21. On February 9, 2015, Respondent completed an admission statement wherein he  
28 admitted to diverting and stealing controlled substances from the pharmacy at Target Store T-314.



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

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Conviction of a Crime)**

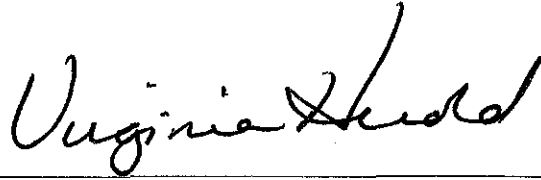
5 27. Respondent is subject to disciplinary action under section 4301(l) of the Business and  
6 Professions Code in that on May 11, 2015, Respondent was convicted of petty theft based on his  
7 plea of no contest, as set forth in paragraphs 17-23.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 136389,  
12 issued to Ruben Garcia.;
- 13 2. Ordering Ruben Garcia to pay the Board of Pharmacy the reasonable costs of the  
14 investigation and enforcement of this case, pursuant to Business and Professions Code section  
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17  
18  
19  
20 DATED: 5/12/16



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

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