

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 RENE JUDKIEWICZ  
Deputy Attorney General  
4 State Bar No. 141773  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2537  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 3998

12 **ORLANDO RAY GARCIA**  
13 **5112 Sepulveda Blvd., #112**  
**Sherman Oaks, CA 91403**  
14 **Applicant for Registration as an Intern**  
**Pharmacist**  
15 **Applicant for Licensure as a Pharmacist**

**STATEMENT OF ISSUES**

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about September 7, 2010, the Board received an Application for Registration as  
24 an Intern Pharmacist from Orlando Ray Garcia (Respondent). On or about September 2, 2010,  
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on October 26, 2010.

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28 ///



1           7.    Section 475 of the Code states, in pertinent part:

2           “(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
3 govern the denial of licenses on the grounds of:

4           .....

5           “(2) Conviction of a crime.

6           .....

7           “(4) Commission of any act which, if done by a licentiate of the . . . profession  
8 in question, would be grounds for suspension or revocation of license.”

9           8.    Section 480 of the Code states, in pertinent part, that a board may deny a license if the  
10 applicant has been convicted of a crime substantially related to the qualifications, functions or  
11 duties of the profession for which application is made, or has committed any act which if done by  
12 a licentiate would be grounds for suspension or revocation of a license.

13           9.    Section 4022 of the Code defines the term “dangerous drug” as including any drug  
14 “that by federal or state law can be lawfully dispensed only on prescription . . . .”

15           10.   Section 4301 of the Code states, in pertinent part:

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

18           .....

19           “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
23 practice authorized by the license.

24           .....

25           “(k) The conviction of more than one misdemeanor or any felony involving the use,  
26 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
27 combination of those substances.

28           ///

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

18           .....

19           “(n) The revocation, suspension, or other discipline by another state of a license to practice  
20 pharmacy . . . or do any other act for which a license is required by this chapter.”

21           11. California Code of Regulations, title 16, section 1770, states, in pertinent part:

22           “For the purpose of denial . . . of a personal . . . license pursuant to Division 1.5  
23 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
24 considered substantially related to the qualifications, functions or duties of a licensee or registrant  
25 if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to  
26 perform the functions authorized by his license or registration in a manner consistent with the  
27 public health, safety, or welfare.”

28           ///

1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Substantially Related Convictions)

3 12. Respondent's applications are subject to denial under Code sections 475, subdivision  
4 (a)(2), 480 and 4301, subdivision (l) in that Respondent was convicted of crimes substantially  
5 related to the qualifications, functions and duties of an intern pharmacist and a pharmacist, as  
6 defined in section 1770 of title 16 of the California Code of Regulations. The circumstances are  
7 as follows:

8 a. On or about February 16, 2007, in the criminal proceedings entitled *People v. Garcia*  
9 (Super. Ct. Los Angeles County, 2007, No. 7BR0029401), Respondent pleaded no contendere to  
10 and was convicted of the misdemeanor of violating Vehicle Code section 23152, subdivision (a),  
11 driving under the influence of any alcoholic beverage or drug, or under the combined influence of  
12 any alcoholic beverage and drug. The factual basis for the conviction was that on or about  
13 January 3, 2007, Respondent was arrested for driving under the influence of Ambien.

14 b. On or about May 22, 2002, in criminal proceedings in Colorado Arapahoe County  
15 District Court, Case No. 02CR2353, Respondent pleaded guilty to and was convicted of  
16 possession of a controlled substance. The factual basis for the conviction was that on or about  
17 May 1, 2002, Respondent sought Vicodin illegally.

18 SECOND CAUSE FOR DENIAL OF APPLICATION

19 (Substance Abuse Convictions)

20 13. Respondent's applications are subject to denial under Code sections 475, subdivision  
21 (a)(2), 480 and 4301, subdivision (k) in that Respondent was convicted of more than one  
22 misdemeanor or felony involving the use, consumption or self-administration of any dangerous  
23 drug or alcoholic beverage. Complainant refers to and incorporates by reference the allegations  
24 set forth in subparagraphs 12a and 12 b, above, as though set forth fully therein. In addition,  
25 Respondent was convicted of the following substance abuse crimes:

26 a. In or about 1995, Respondent was convicted in Santa Barbara County Superior Court  
27 of driving under the influence.  
28



1 vehicle. Complainant refers to and incorporates by reference the allegations set forth in  
2 subparagraphs 12a and 12 b, above, as though set forth fully therein.

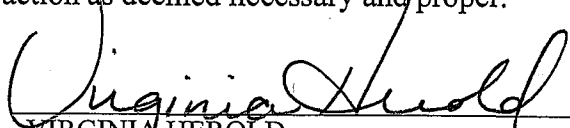
3 c. The Stipulation and Final Agency Order granted a restricted pharmacy intern license  
4 subject to suspension and conditional reinstatement, and 10 years' probation upon termination of  
5 the suspension and conditional reinstatement, with terms and conditions including satisfactory  
6 completion of a Colorado Board-approved peer health assistance diversion program, and urine or  
7 blood tests.

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. Denying the application of Respondent Orlando Ray Garcia for Registration as an  
12 Intern Pharmacist;
- 13 2. Denying the application of Respondent for Pharmacist Licensure and Examination;  
14 and
- 15 2. Taking such other and further action as deemed necessary and proper.

16 DATED: 6/2/11

17   
18 VIRGINIA HEROLD  
19 Executive Officer  
20 Board of Pharmacy  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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