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

11
12 In the Matter of the Accusation Against:

Case No. 5133

13
14 **NICOLE GARCIA**
15 **3501 E. Rialto Avenue**
Fresno, California 93726
16 **Pharmacy Technician Registration No. TCH**
107019

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17
18 Respondent.

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21 FINDINGS OF FACT

22 1. On or about May 1, 2014, Complainant Virginia K. Herold, in her official capacity as
23 the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 5133
24 against Nicole Garcia (Respondent) before the California State Board of Pharmacy. (Accusation
25 attached as Exhibit A.)

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1 2. On or about September 20, 2010, the California State Board of Pharmacy (Board)
2 issued Pharmacy Technician Registration No. TCH 107019 to Respondent. The Pharmacy
3 Technician Registration expired on January 31, 2014, and has not been renewed.

4 3. On or about May 16, 2014, Respondent was served by Certified Mail Return Receipt
5 Requested and First Class United States Mail with copies of the Accusation No. 5133, Statement
6 to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government
7 Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant
8 to Business and Professions Code section 4100, is required to be reported and maintained with the
9 Board. Respondent's address of record was and is: 3501 E. Rialto Avenue, Fresno, California
10 93726.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. As of July 3, 2014, neither the Certified Mail nor the First Class United States Mail
15 has been returned by the United States Postal Service.

16 6. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
21 may nevertheless grant a hearing.

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5133.

24 8. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

 9. Pursuant to its authority under Government Code section 11520, the Board finds that
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
2 as well as taking official notice of all the investigatory reports, exhibits and statements contained
3 therein on file at the Board offices regarding the allegations contained in Accusation No. 5133,
4 finds that the charges and allegations in Accusation No. 5133, are separately and severally, found
5 to be true and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$1,361.50 as of July 3, 2014.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Nicole Garcia has subjected her
11 Pharmacy Technician Registration No. TCH 107019 to discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration
14 based upon the following violations alleged in the Accusation, all of which are supported by the
15 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

16 Violation of Business & Professions Code sections 4301(l) and 4301(f) by Respondent's
17 conviction in October 2013 for commission of first degree burglary under Penal Code section
18 459/460 (a felony) in *People v. Nicole Garcia*, Fresno County Superior Court Case No.
19 F13907963.

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ORDER

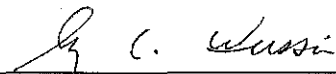
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 107019, heretofore issued to Respondent Nicole Garcia, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on September 4, 2014.

It is so ORDERED August 5, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Case No. 5133

13 **NICOLE GARCIA**
3501 E. Rialto Avenue
Fresno, CA 93726

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **107019**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 20, 2010, the Board issued Original Pharmacy Technician
22 Registration Number TCH 107019 ("registration") to Nicole Garcia ("Respondent"). The
23 registration expired on January 31, 2014.

24 **JURISDICTION**

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

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STATUTORY PROVISIONS

4. 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:

(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.

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

5. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued 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 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

6. Code section 4301 states, in pertinent part:

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.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to

1 fix the degree of discipline or, in the case of a conviction not involving controlled
2 substances or dangerous drugs, to determine if the conviction is of an offense
3 substantially related to the qualifications, functions, and duties of a licensee under this
4 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of this provision. The
6 board may take action when the time for appeal has elapsed, or the judgment of
7 conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under
9 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
10 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
11 dismissing the accusation, information, or indictment . . .

7 **COST RECOVERY**

8 7. Code section 125.3 provides, in pertinent part, that a Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Criminal Conviction)**

14 8. Respondent is subject to disciplinary action pursuant to Code section 4301,
15 subdivision (l), in that on or about October 4, 2013, in the criminal proceeding entitled *People vs.*
16 *Nicole Garcia* (Super. Ct. Fresno County, Case No. F13907963), Respondent pled no contest to
17 violating Penal Code section 459/460, subdivision (a) (first degree burglary), a felony, a crime
18 substantially related to the qualifications, functions, and duties of a pharmacy technician. On or
19 about November 1, 2013, the imposition of Respondent's sentence was suspended and
20 Respondent was placed on formal probation for 3 years on terms and conditions, including that
21 Respondent enroll in Mental Health, a 52 week Batterer's Treatment Program and a 6 month
22 substance abuse program; submit to alcohol and drug testing as required by the Court or
23 Probation Officer; not contact the victim or the victim's family members without the consent of
24 the Probation Officer or the Court; and comply with the criminal protective order/stay away
25 provisions for 10 years. Respondent was also ordered to serve 365 days in the Fresno County
26 Jail. The circumstances of the crime are set forth in paragraphs 9 through 11 below.

27 9. On or about August 19, 2013, Fresno Police Department ("FPD") officers responded
28 to a report of a female, later identified as Respondent, breaking into an apartment while armed

1 with a knife. Upon arrival, the officers observed a broken window with blood on the glass and
2 blood smeared on the curtains. The officers could hear a male and female inside the residence
3 and heard the male say, "Stop". The officers forced entry into the locked residence and observed
4 the victim holding Respondent against a wall. Respondent was armed with a large knife. The
5 officers deployed a Taser to Respondent and were able to get the knife away from her; however,
6 they noted she had a second knife. The officers cycled the Taser four additional times and were
7 finally able to get the second knife away from Respondent.

8 10. The victim reported that he heard banging at his front door and then his niece and
9 nephew screamed, "it's Nicole, hide". The children hid in the bedroom, terrified. The victim
10 stated that he went outside to talk to Respondent and she indicated she was going to kill him and
11 then herself. Respondent produced a knife and began cutting at her throat. The victim ran back
12 inside and locked the door. Respondent broke out the bedroom window and starting crawling
13 through the broken window. The victim slammed his bedroom door and ran out to the patio
14 where he retrieved a shovel for protection. When the victim went back into the apartment, he saw
15 Respondent in the hallway with a second knife. The victim stated Respondent kept repeating that
16 she was going to kill him, then everyone else in the apartment, and then herself. The victim
17 indicated that he was able to grab Respondent's wrists and pin her against a wall until police
18 arrived. The victim stated that he felt he was going to die and that Respondent was probably
19 going to stab him if he let go of her. The victim indicated that he had pain on his forearm and
20 officers observed what appeared to be teeth marks.

21 11. Respondent was taken by ambulance to Community Regional Medical Center
22 (Respondent had cuts on her arms, legs, neck and head). One of the officers followed the
23 ambulance to the medical center and attempted to get a statement from Respondent. Respondent
24 was uncooperative with the officer and had a blank stare on her face. Respondent told the officer
25 to believe what the victim said because he can manipulate people into believing what he wants.
26 Respondent provided no additional statement. The officer placed Respondent on a 5150 hold
27 based on her threats of killing herself and others.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 12. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (f), for unprofessional conduct, in that Respondent committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, and/or corruption, as set forth in paragraphs 8 through 11
6 above, and as follows: On or about August 11, 2013, an FPD officer responded to a call of a
7 disturbance. The victim reported that Respondent was outside his residence, drunk, and was
8 refusing to leave. Upon arrival, the officer observed Respondent exiting the apartment complex
9 with blood on her hands and legs. Respondent stated that she had broken a window. The officer
10 could smell the odor of alcohol emitting from Respondent's breath. The victim arrived at the
11 scene and stated that Respondent had broken the front window to his apartment. Another officer
12 arrived to assist and stood by with Respondent. The victim reported that he had dated
13 Respondent for approximately two weeks, but had broken up with her approximately three
14 months earlier. The victim indicated that Respondent had been trying to fight his new girlfriend
15 and that she had showed up at his residence uninvited and refused to leave. Later, Respondent
16 admitted to the officers that she had broken the window with her fist. The officers arrested
17 Respondent for violating Penal Code section 594, subdivision (b)(1) (vandalism).

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107019,
22 issued to Nicole Garcia;

23 2. Ordering Nicole Garcia to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3;

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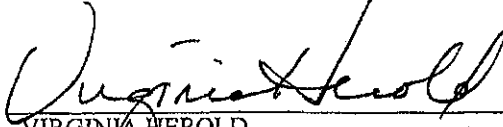
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/1/14



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

SA2014114890