

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 5203

13 **JOHN DAVID GARCIA**
14 4538 East 52nd Place
15 Maywood, CA 90870
16 Pharmacy Technician Registration
17 No. TCH 113645

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about November 15, 2014, Complainant Virginia K. Herold, in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
23 filed Accusation No. 5203 against John David Garcia (Respondent) before the Board of
24 Pharmacy (Board). (Accusation attached as Exhibit A.)

25 2. On or about August 3, 2011, the Board issued Pharmacy Technician Registration No.
26 TCH 113645 to Respondent. The Pharmacy Technician Registration was in full force and effect
27 at all times relevant to the charges brought in Accusation No. 5203 and expired on September 30,
28 2014, and has not been renewed. Pursuant to Business and Professions Code section 4300.1, this

1 lapse in licensure does not deprive the Board of its authority to institute or continue this
2 disciplinary proceeding.

3 3. On or about December 11, 2014, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 5203, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 4538 East 52nd Place, Maywood, CA 90870.

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

12 5. Government Code section 11506 states, in pertinent part:

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

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 5203.

21 7. California Government Code section 11520 states, in pertinent part:

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

26 8. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 5203, finds that

1 the charges and allegations in Accusation No. 5203, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 9. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,555.00 as of February 6, 2015.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent John David Garcia has subjected
8 his Pharmacy Technician Registration No. TCH 113645 to discipline.

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

10 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
11 Registration based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case:

13 a. Business and Professions Code sections 4301, subdivision (l) and 490, in conjunction
14 with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of
15 a crime substantially related to the qualifications, functions or duties of a pharmacy technician as
16 follows: On or about February 26, 2014, Respondent was convicted of one misdemeanor count of
17 violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by
18 weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of*
19 *California v. John David Garcia* (Super. Ct. L. A. County, 2014, No. 3BF06190.)

20 (b) Business and Professions Code section 4301, subdivision (h), in that Respondent used
21 alcoholic beverages to an extent or in a manner dangerous or injurious to himself, another person,
22 or the public when he drove a vehicle while under the influence of alcohol.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 113645, heretofore issued to Respondent John David Garcia, is revoked.

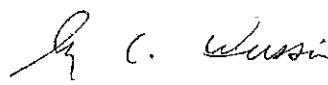
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant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

This decision shall become effective on April 24, 2015.

It is so ORDERED on March 25, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STAN C. WEISSER
Board President

51707720.DOC
DOJ Matter ID:LA2014511770
mc (2/26/15)

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2564
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5203

13 **JOHN DAVID GARCIA**
4538 East 52nd Place
14 Maywood, CA 90870

A C C U S A T I O N

15 Pharmacy Technician Registration
No. TCH 113645

16 Respondent.

17
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 (Board), Department of Consumer Affairs.

22 2. On or about August 3, 2011, the Board issued Pharmacy Technician Registration No.
23 TCH 113645 to John David Garcia (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2014, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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

6. 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."

7. 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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

"(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 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.

....

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

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency."

3 REGULATORY PROVISIONS

4 8. California Code of Regulations, title 16, section 1770, states:

5 "For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by his license or registration in a manner
10 consistent with the public health, safety, or welfare."

11 COST RECOVERY

12 9. Section 125.3 provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 FIRST CAUSE FOR DISCIPLINE

19 (Conviction of a Substantially Related Crime)

20 14. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
21 subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the
22 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
23 related to the qualifications, functions, and duties of a pharmacy technician, as follows:

24 a. On or about February 26, 2014, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
26 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
27 proceeding entitled *The People of the State of California v. John David Garcia* (Super. Ct. L.A.
28 County, 2014, No. 3BF06190.) Respondent admitted the charged enhancement that he had a

1 0.20% or more, by weight, of alcohol in his blood within the meaning of Vehicle Code section
2 23556. The Court sentenced Respondent to serve one day in Los Angeles County Jail, ordered
3 him to enroll in a 9-month first offender alcohol program, and placed him on 36 months
4 probation, with terms and conditions.

5 b. The circumstances surrounding the conviction are that on or about November 9, 2013,
6 the Whittier Police Department responded to a traffic collision. When the officer arrived,
7 Respondent was standing on the sidewalk and having difficulty maintaining his balance. The
8 officer detected a strong odor of an alcoholic beverage and Respondent was observed to have
9 bloodshot, watery eyes. Respondent submitted to series of field sobriety tests, which he was
10 unable to perform successfully. During the booking procedure, Respondent submitted to a blood
11 test that resulted in a blood alcohol content level of 0.30%.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 10. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
15 that on or about November 9, 2013, Respondent used alcoholic beverage to an extent or in a
16 manner dangerous or injurious to himself, another person, or the public when he operated a
17 vehicle while having 0.30% of alcohol in his blood. Complainant refers to, and by this reference
18 incorporates, the allegations set forth above in paragraphs 9, subparagraph (b), as though set forth
19 fully.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct / Violation of Licensing Chapter)**

22 11. Respondent is subject to disciplinary action under section 4301, (o), in that
23 Respondent committed acts of unprofessional conduct and / or violated provisions of the licensing
24 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
25 in paragraphs 9-10, inclusive, as though set forth fully.

26 ///

27 ///

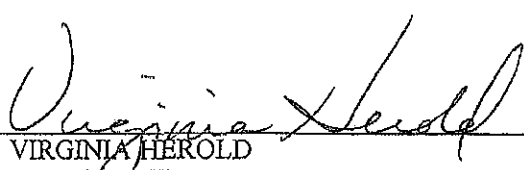
28 ///

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 113645, issued to John David Garcia;
2. Ordering John David Garcia to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/15/14


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

LA2014511770
51521959.doc
mc (5/27/14)