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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:	Case No. 5292
<b>YESENIA IVETTE GARCIA</b> 1431 W. 35th Street Los Angeles, CA 90018	<b>DEFAULT DECISION AND ORDER</b>
Pharmacy Technician Registration No. TCH 69715	[Gov. Code, §11520]
Respondent.	

FINDINGS OF FACT

1. On or about October 5, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5292 against Yesenia Ivette Garcia (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 15, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 69715 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5292 and will expire on December 31, 2015, unless renewed. This lapse in licensure, however,

///

1 pursuant to section 4300.1, does not deprive the Board of its authority to institute or continue this  
2 disciplinary proceeding.

3 3. On or about October 21, 2015, Respondent was served by Certified and First Class  
4 Mail copies of the Accusation No. 5292, 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: 1431 W. 35th Street, Los Angeles, CA 90018.

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. On or about December 16, 2015, the aforementioned documents were returned by the  
13 U.S. Postal Service marked "Unclaimed."

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5292.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds  
28 Respondent is in default. The Board will take action without further hearing and, based on the  
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. 5292, finds that

1 the charges and allegations in Accusation No. 5292, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 10. 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 are \$2,558.50 as of January 12, 2016.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Yesenia Ivette Garcia has  
8 subjected her Pharmacy Technician Registration No. TCH 69715 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 section 4301, subdivision (f), on the grounds of  
14 unprofessional conduct, in that, between November and December 2013, while working as a  
15 pharmacy technician at Rite Aid #5458, Respondent committed acts involving dishonesty, fraud,  
16 or deceit when she took eight Viagra pills from the pharmacy's drug stock.

17 b. Business and Professions Code section 4301, subdivision (o), in conjunction with  
18 section 4059, subdivision (a), on the grounds of unprofessional conduct in that Respondent  
19 unlawfully furnished Viagra, a dangerous drug, to her brother who did not have a prescription for  
20 the medication.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 69715, heretofore issued to Respondent Yesenia Ivette 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 March 11, 2016.

It is so ORDERED February 10, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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DOJ Matter ID:LA2015500003

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(YESENIA IVETTE GARCIA)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
4 State Bar No. 206911  
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5 Los Angeles, CA 90013  
Telephone: (213) 897-2541  
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. 5292

13 **YESENIA IVETTE GARCIA**  
1431 W. 35th Street  
Los Angeles, CA 90018

**A C C U S A T I O N**

15 Pharmacy Technician Registration  
No. TCH 69715

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 15, 2006, the Board issued Pharmacy Technician Registration No.  
23 TCH 69715 to Yesenia Ivette 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 December  
25 31, 2015, unless renewed.

26 **JURISDICTION**

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

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

3           5.     Section 4300.1 states:

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

9                           STATUTORY AND REGULATORY PROVISIONS

10          6.     Section 4022 states:

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

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

15           "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
16 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with  
17 the designation of the practitioner licensed to use or order use of the device.

18           "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
19 prescription or furnished pursuant to Section 4006."

20          7.     Section 4059 states, in pertinent part:

21           "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
22 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
23 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
25 3640.7."

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8. 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.

....

“(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 federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.”

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

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

**COST RECOVERY**

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

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1 **11. CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

2 "Viagra," a brand name for sildenafil citrate, which is a treatment for erectile dysfunction, is  
3 categorized as a dangerous drug pursuant to section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty, Fraud, or Deceit)**

6 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), on the  
7 grounds of unprofessional conduct, in that, between November and December 2013, while  
8 working as a pharmacy technician at Rite Aid #5458, Respondent committed acts involving  
9 dishonesty, fraud, or deceit when she took eight Viagra pills from the pharmacy drug stock.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Furnishing of Controlled Substances and / or Dangerous Drugs)**

12 13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in  
13 conjunction with section 4059, subdivision (a), on the grounds of unprofessional conduct in that  
14 Respondent unlawfully furnished Viagra, a dangerous drug, to her brother who did not have a  
15 prescription for the medication. Complainant refers to, and by this reference incorporates, the  
16 allegations set forth above in paragraph 12, as though set forth fully.

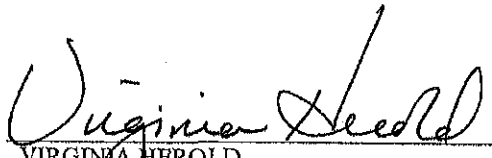
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PRAYER

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 69715, issued to Yesenia Ivette Garcia;
2. Ordering Yesenia Ivette Garcia to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/5/15   
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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mc (8/25/15)