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

In the Matter of the Accusation Against:
LESLY ISABEL MARROQUIN
4944 W. 104th Street
Inglewood, CA 90304
**Pharmacy Technician Registration No.
TCH 150102**

Respondents.

Case No. 5909
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 8, 2017, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5909 against Lesly Isabel Marroquin (“Respondent”) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 7, 2015, the Board of Pharmacy (“Board”) issued Pharmacy Technician Registration No. TCH 150102 to Respondent. The Pharmacy Technician Registration expired on March 31, 2017, and has not been renewed.

3. Business and Professions Code section 4300.1 of the Code 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

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license."

4 4. Business and Professions Code section 118, subdivision (b), states:

5 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
6 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
7 of a court of law, or its surrender without the written consent of the board, shall not, during any
8 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
9 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
10 provided by law or to enter an order suspending or revoking the license or otherwise taking
11 disciplinary action against the licensee on any such ground."

12 5. On or about March 17, 2017, Respondent was served by Certified and First Class
13 Mail copies of the Accusation No. 5909, Statement to Respondent, Notice of Defense, Request
14 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
15 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
16 section 4100, is required to be reported and maintained with the Board. Respondent's address of
17 record was and is: 4944 W. 104th Street, Inglewood, CA 90304.

18 6. Service of the Accusation was effective as a matter of law under the provisions of
19 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
20 124.

21 7. Government Code section 11506(c) states, in pertinent part:

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

27 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
28 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5909.

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1 9. California Government Code section 11520(a) states, in pertinent part:

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

5 10. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondent is in default. The Board will take action without further hearing and, based on the
7 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
8 taking official notice of all the investigatory reports, exhibits and statements contained therein on
9 file at the Board's offices regarding the allegations contained in Accusation No. 5909, finds that
10 the charges and allegations in Accusation No. 5909, are separately and severally, found to be true
11 and correct by clear and convincing evidence.

12 11. Taking official notice of its own internal records, pursuant to Business and
13 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
14 and Enforcement are \$1,502.50 as of April 24, 2017.

15 **DETERMINATION OF ISSUES**

16 1. Based on the foregoing findings of fact, Respondent Lesly Isabel Marroquin has
17 subjected her Pharmacy Technician Registration No. TCH 150102 to discipline.

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

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

22 a. Business and Professions Code section sections 4300 and 4301, subdivisions (f) and
23 (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
24 unprofessional conduct, in that Respondent committed a substantially related crime, as follows:

25 i. On or about April 11, 2016, after pleading nolo contendere, Respondent was
26 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a)
27 [Petty Theft] in the criminal proceeding entitled *The People of the State of California v.*
28 *Lesly Isabel Marroquin* (Super. Ct. L.A. County, 2016, No. 6TR01019). The Court

1 sentenced Respondent to 36-months summary probation with terms and conditions,
2 including 2 days in jail. Respondent was also ordered to pay \$1,396.00 in restitution and
3 fees and was further ordered to stay away from all Vons supermarkets.

4 ii. The circumstances underlying the conviction are that on or about February 5,
5 2016, while in a grocery store, Respondent concealed merchandise in her purse worth
6 \$163.36 and proceeded to exit the store without paying for the concealed items.

7 iii. On or about December 4, 2015, after pleading guilty to one count of violating
8 Business and Professions Code section 4060 [Possession of a Controlled Substance without
9 a Prescription], a misdemeanor, Respondent was granted a deferred entry of judgment for a
10 period of 18 months, with terms and conditions, in the criminal proceeding entitled *The*
11 *People of the State of California v. Lesly Isabel Marroquin* (Super. Ct. L.A. County, 2015,
12 No. 5IG04994. On May 9, 2016, due to the Respondent's failure to appear in court for a
13 mandatory progress report hearing, the existing deferred entry of judgment was terminated
14 by the Court and the criminal proceedings were reinstated as to count one (1) and
15 Respondent was convicted of violating Business and Professions Code section 4060.

16 iv. The circumstances underlying the conviction are that on or about August 31,
17 2015, during a routine patrol stop, Respondent was found to be carrying an unlabeled
18 medicine bottle containing a large amount of Vicodin without a valid prescription.
19 Respondent was later also found to have marijuana in her purse.

20 b. Business and Professions Code section sections 4300 and 4301, subdivisions (j)
21 and/or (o), on the grounds of unprofessional conduct, for violating Code sections 4059 and 4060,
22 in that Respondent admitted to possessing a large amount of Vicodin on her person without a
23 valid prescription. Respondent also admitted to having marijuana in her purse.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 150102, heretofore issued to Respondent Lesly Isabel Marroquin, 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 at 5:00 p.m. on July 19, 2017.

It is so ORDERED on June 19, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

52465940.DOCX
DOJ Matter ID:LA2016602412

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
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2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 264-0259
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **LESLY ISABEL MARROQUIN**
4944 W. 104th Street
13 Inglewood, CA 90304
14 Pharmacy Technician Registration No.
TCH 150102
15
16 Respondent.

Case No. 5909

ACCUSATION

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, Department of Consumer Affairs.
22 2. On or about August 7, 2015, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 150102 to Lesly Isabel Marroquin (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 477 of the Code states, in part: "As used in this division: . . . (b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

5. Section 4022 of the Code states:

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

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

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

6. Section 4060 of the Code states:

"A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock

1 in containers correctly labeled with the name and address of the supplier or producer.

2 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
3 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

4 7. Section 4300 of the Code states, in part:

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

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

9 "(1) Suspending judgment.

10 "(2) Placing him or her upon probation.

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

12 "(4) Revoking his or her license.

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

15

16 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
18 shall have all the powers granted therein. The action shall be final, except that the propriety of
19 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
20 Civil Procedure."

21 8. Section 4300.1 of the Code states:

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

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1 9. Section 4301 of the Code states, in part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
4 not limited to, any of the following:

5

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

9

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

12

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

1 indictment. . . .”

2 REGULATORY PROVISIONS

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

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

10 CONTROLLED SUBSTANCE / DANGEROUS DRUGS

11 11. Hydrocodone Bitartrate and Acetaminophen referred to as hydrocodone/apap, with
12 trade names of Lortab, Norco and Vicodin, is a Schedule III controlled substance pursuant to
13 Health and Safety Code section 11056(e)(4), and is categorized as a dangerous drug pursuant to
14 Code section 4022. Hydrocodone is used for moderate to severe pain. As of October 6, 2014,
15 hydrocodone/apap has been rescheduled to a Schedule II controlled substance.

16 12. Marijuana is a Schedule I controlled substance as designated by Health and Safety
17 Code section 11054, subdivisions (a) and (d)(13).

18 COST RECOVERY

19 13. Code section 125.3 provides that the Board may request the administrative law judge
20 to direct a licensee found to have committed a violation or violations of the licensing act to pay a
21 sum not to exceed the reasonable costs of the investigation and enforcement of the case, with
22 failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a
23 case settles, recovery of investigation and enforcement costs may be included in a stipulated
24 settlement.

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1 found to have marijuana in her purse.

2 SECOND CAUSE FOR DISCIPLINE

3 (Unlawful Possession of Controlled Substances/Dangerous Drugs)

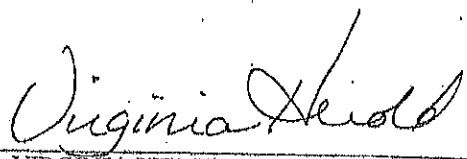
4 15. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
5 subdivisions (j) and/or (o), on the grounds of unprofessional conduct, for violating Code sections
6 4059 and 4060, in that on or about August 31, 2015, Respondent admitted to possessing a large
7 amount of Vicodin on her person without a valid prescription. Respondent also admitted to
8 having marijuana in her purse. Complainant refers to and by this reference incorporates the
9 allegations set forth above in paragraph 14, subparagraphs (c) and (d), inclusive, as though set
10 forth fully.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 150102,
15 issued to Lesly Isabel Marroquin;
- 16 2. Ordering Lesly Isabel Marroquin to pay the Board of Pharmacy the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

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21
22 DATED: 3/8/17



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

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