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

11 In the Matter of the Accusation Against:

Case No. 4794

12 **MATTHEW PAUL LEBLANC**
13 **1137 Ariana Road**
14 **San Marcos, CA 92075**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 129018**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about December 20, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 129018 to Matthew Paul Leblanc (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on February 28, 2014, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4022 of the Code states

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

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

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

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

24 7. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
25 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
26 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
27 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8. Section 4060 of the Code states, in pertinent part, that no person shall possess any
controlled substance, except that furnished to a person upon the prescription of a physician,
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

1 9. Section 4301 of the Code states:

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

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

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

13 10. Health and Safety Code section 11550 states in pertinent part:

14 (a) No person shall use, or be under the influence of any controlled
15 substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of
16 subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23)
17 of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section
18 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of
19 subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV,
20 or V, except when administered by or under the direction of a person licensed by the
21 state to dispense, prescribe, or administer controlled substances. It shall be the burden
22 of the defense to show that it comes within the exception. Any person convicted of
23 violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a
24 term of not less than 90 days or more than one year in a county jail. The court may
25 place a person convicted under this subdivision on probation for a period not to
26 exceed five years and, except as provided in subdivision (c), shall in all cases in
27 which probation is granted require, as a condition thereof, that the person be confined
28 in a county jail for at least 90 days. Other than as provided by subdivision (c), in no
event shall the court have the power to absolve a person who violates this subdivision
from the obligation of spending at least 90 days in confinement in a county jail.

22 **REGULATORY PROVISIONS**

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

24 For the purpose of denial, suspension, or revocation of a personal or facility
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
26 Professions Code, a crime or act shall be considered substantially related to the
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree
28 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.

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COSTS

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

DRUGS

7
8 13. Adderall, a brand name for dextroamphetamine and amphetamine, is a Schedule II
9 controlled substance as designated by Health and Safety Code section 11055, subdivision (d), and
10 is a dangerous drug pursuant to Business and Professions Code section 4022.

11 14. Ambien, a brand name for zolpidem, is a Schedule IV controlled substance as
12 designated by Health and Safety Code section 11057, subdivision (d)(32), and is a dangerous
13 drug pursuant to Business and Professions Code section 4022.

14 15. Heroin is a Schedule I controlled substance as designated by Health and Safety
15 Code section 11054, subdivision (c)(11), and is a dangerous drug pursuant to Business and
16 Professions Code section 4022.

17 16. Lorazepam is a Schedule IV controlled substance as designated by Health and
18 Safety Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 17. Oxycodone is a Schedule II controlled substance as designated by Health and
21 Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and
22 Professions Code section 4022.

23 18. Suboxone, a trade name for a medication that contains buprenorphine and
24 naloxone that belong to the drug class, narcotic analgesics, is a Schedule III controlled substance
25 as designated by Health and Safety Code section 11056.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Driving Under the Influence of Drugs on February 13, 2013)**

3 19. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (h) of the Code in that he used dangerous drugs to an extent or in a manner dangerous
5 to himself or to the public. The circumstances are as follows.

6 20. On or about February 13, 2013, at approximately 8:30 am, Respondent was traveling
7 Westbound on Olivenhain Road in San Diego, California, when a citizen called 911 to report
8 Respondent's erratic driving behavior and possible drunk driving. Respondent was swerving
9 across traffic lanes and almost caused a collision. San Diego County Sheriff officers responded to
10 the 911 report and conducted a traffic stop. Upon contact with Respondent, a deputy observed
11 that Respondent exhibited symptoms of being under the influence of prescription medications
12 and/or controlled substances, specifically opiates. Respondent was unable to complete field
13 sobriety tests as explained and demonstrated. Respondent's movements, reflexes, and responses
14 all appeared to be impaired. Deputies found a total of 26 used syringes and 5 new ones inside
15 Respondent's vehicle and backpack. Deputies also found packages of suboxone and prescriptions
16 for oxycodone, lorazepam, and adderall. Based upon the observation of Respondent's erratic
17 driving behavior, Respondent's slow lethargic movements, his poor performance on the field
18 sobriety test, his extreme trembling and symptoms of being under the influence of an opiate, the
19 Deputy formed the opinion that Respondent was under the influence of a combination of heroin
20 and prescription medications. Two blood samples were obtained from Respondent which tested
21 positive for heroin, amphetamines, and opiates. Respondent then admitted that he used heroin
22 between 2:00 and 3:00 am that morning.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Possession of Ambien and Suboxone without a Prescription on February 13, 2013)**

25 21.. Respondent has subjected his registration to discipline under section 4301,
26 subdivision (j) of the Code in that he violated California statutes regulating controlled substances.
27 Respondent possessed the controlled substances ambien and suboxone, without a prescription on
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1 February 13, 2013 as described in paragraph 20, above, in violation of Business and Professions
2 Code sections 4022, 4059, 4060, and Health and Safety Code section 11550, subdivision (a).

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4 **PRAYER**

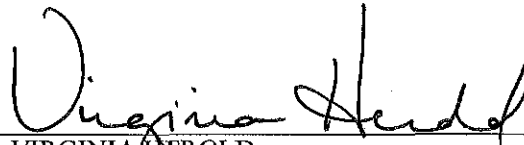
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Technician Registration Number 129018, issued
8 to Matthew Paul Leblanc

9 2. Ordering Matthew Paul Leblanc to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;

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

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15 DATED: 2/18/14



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

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