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

11 In the Matter of the First Amended Accusation  
Against:

Case No. 4797

12 **HEATHER E. LABANDEIRA GARCIA**  
13 **P. O. Box 807**  
14 **Hanford, CA 93232**

**FIRST AMENDED ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **59719**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about November 29, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 59719 to Heather E. Labandeira Garcia (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 August 31, 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 of the Code states, in pertinent part:

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

7 (b) The board shall discipline the holder of any license issued by the board, whose  
8 default has been entered or whose case has been heard by the board and found guilty,  
by any of 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 5. Section 4300.1 of the Code states:

16 The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
17 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  
18 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.

19 6. Section 4301 of the Code states, in pertinent part:

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

23 ...

24 (h) The administering to oneself, of any controlled substance, or the use of any  
25 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  
26 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.

27 ...

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

20 ...  
21  
22 7. Section 4022 of the Code states

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this device to  
28 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.

8. 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

9. Section 125.3 of the Code states, 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.

1 **DRUGS AT ISSUE**

2 10. Zolpidem tartrate (brand name "Ambien") is a dangerous drug within the meaning of  
3 Business and Professions Code section 4022 and is a Schedule IV controlled substance as  
4 designated by Health and Safety Code section 11057, subdivision (d)(32).

5 11. Carisoprodol (brand name "Soma") is a dangerous drug within the meaning of  
6 Business and Professions Code section 4022 and is a Schedule IV controlled substance under  
7 Health and Safety Code section 11057, subdivision (d)(17).

8 12. Hydrocodone and acetaminophen (brand name "Norco") is a dangerous drug within  
9 the meaning of Business and Professions Code section 4022 and is a Schedule III controlled  
10 substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

11 13. Meprobamate is a dangerous drug within the meaning of Business and Professions  
12 Code section 4022 and is a Schedule IV controlled substance as designated by Health and Safety  
13 Code section 11057, subdivision (d)(18).

14 14. Hydromorphone is a derivative of morphine and is a dangerous drug within the  
15 meaning of Business and Professions Code section 4022, and is a Schedule II controlled  
16 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(J).

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Criminal Conviction)**

19 15. Respondent is subject to disciplinary action pursuant to Code section 4301,  
20 subdivision (l), in that on or about August 16, 2013, in the case of *People v. Heather Elizabeth*  
21 *Garcia, aka Heather Labandeira*, (Super. Ct. Kings County, 2013, Case No. 13CM1669),  
22 Respondent was convicted by the Court on her plea of nolo contendere of violating Vehicle Code  
23 section 23152(a) (driving while under the influence of alcohol or drugs, or their combined  
24 influence), a misdemeanor. The crime is substantially related to the qualifications, functions or  
25 duties of a licensed pharmacy technician. The circumstances are as follows:

26 16. On or about March 8, 2013, officers were dispatched to Respondent's residence  
27 regarding a traffic collision involving Respondent. Respondent's husband stated that Respondent  
28 was under the influence of a narcotic and left the scene after striking a parked white pick-up. A  
check of the area turned up negative for any type of collision involving Respondent's vehicle,

1 however, the officer contacted Respondent, who was sitting in her vehicle with the ignition on  
2 and passed out behind the wheel. While speaking with Respondent, the officer noticed her speech  
3 was slurred, and Respondent stated that she had taken some Soma. Respondent failed the field  
4 sobriety tests administered by the officer, and a blood sample revealed that Respondent had  
hydrocodone in her system.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Use of Controlled Substances or Dangerous Drugs to the Extent or in**  
7 **a Manner Dangerous or Injurious to Oneself and Others)**

8 17. Respondent is subject to disciplinary action pursuant to Code section 4301,  
9 subdivision (h), in that Respondent used controlled substances and dangerous drugs to the extent  
10 or in a manner dangerous or injurious to herself, others, and the public, as set forth below.

11 a. On or about August 22, 2012, Hanford police officers initiated a traffic stop of  
12 Respondent's vehicle for failing to stop at a marked limit line. The officers noticed that  
13 Respondent had red/watery eyes, her speech was slow and slurred. Respondent stated that she  
14 hadn't consumed any alcohol, but had taken one Soma pill and one Norco pill. Officers  
15 administered field sobriety tests, which Respondent failed. A blood sample revealed that  
16 Respondent had the following substances in her system: carisoprodol, meprobamate,  
17 hydromorphone, citalopram, and zolpidem.

18 b. On or about September 11, 2012, a Hanford police officer was dispatched to  
19 Respondent's residence for a 911 hang up. Dispatch called the number back and advised they  
20 could hear a female yelling for help. Respondent's husband told the officer that his wife takes  
21 Norco and Soma for pain, but takes much more than prescribed in order to get high.  
22 Respondent's husband stated he was trying to keep her from leaving the residence because  
23 Respondent had recently driven under the influence of her medication. Respondent told the  
24 officer that she had taken one Soma and one Norco. While speaking to Respondent, the officer  
25 noticed she had droopy eyelids, very slurred speech, and had difficulty standing on her feet. The  
26 officer performed a drug influence evaluation and determined that Respondent was under the  
27 influence of a controlled substance, specifically, CNC depressants. A blood sample revealed that  
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1 Respondent had hydrocodone and hydromorphone in her system. The amount of hydrocodone  
2 was .17 mg/L, and the effective level is .002-.05.

3 **PRAYER**

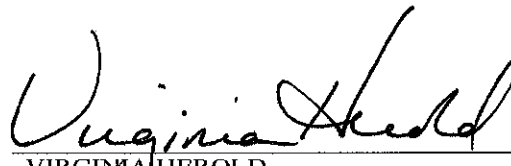
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 59719,  
7 issued to Heather E. Labandeira Garcia.;

8 2. Ordering Heather E. Labandeira Garcia to pay the Board of Pharmacy the reasonable  
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code  
10 section 125.3;

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

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13  
14 DATED: 6/9/14



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

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

14 **Pharmacy Technician Registration No. TCH**  
15 **59719**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 29, 2004, the Board of Pharmacy issued Pharmacy Technician  
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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.

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- (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.

7. 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



1 blank to be filled in with the designation of the practitioner licensed to use or order  
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4 **CAUSE FOR DISCIPLINE**

5 **(Use of Controlled Substances or Dangerous Drugs to the Extent or in a Manner  
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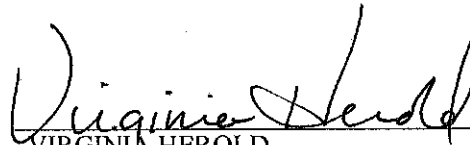
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19  
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21 DATED: \_\_\_\_\_

9/6/13



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
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State of California  
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