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

12 In the Matter of the Accusation Against:

Case No. 5388

13 **LUIS MANUEL HERNANDEZ**
27657 Brentstone Way
14 Murietta, CA 92563

FIRST AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH 78828**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On October 18, 2007, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 78828 to Luis Manuel Hernandez (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 November 30, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) provides that every license issued by the Board may
6 be suspended or revoked.

7 5. Section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 4301 states:

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

25

26 (g) Knowingly making or signing any certificate or other document that
27 falsely represents the existence or nonexistence of a state of facts.

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.

1
2 (k) The conviction of more than one misdemeanor or any felony involving
3 the use, consumption, or self-administration of any dangerous drug or alcoholic
4 beverage, or any combination of those substances.

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

24
25 (p) Actions or conduct that would have warranted denial of a license.
26

27 **REGULATORY PROVISIONS**

28 8. California Code of Regulations, title 16, section 1769, states:

 (b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such person and
his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or
offense(s).
- (4) Whether the licensee has complied with all terms of parole,
probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

1
2 9. California Code of Regulations, title 16, section 1770, states:

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

10 **COST RECOVERY**

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

17 **DRUGS AT ISSUE**

18 11. Alprazolam is a Schedule IV controlled substance as designated by Health and
19 Safety Code section 11057, subdivision (d)(1) and is a dangerous drug under section 4022.

20 12. Clonazepam is a Schedule IV controlled substance as designated by Health and
21 Safety Code, section 11057, subdivision (d)(7) and is a dangerous drug under section 4022.

22 13. Diazepam is a Schedule IV controlled substance as designated by Health and
23 Safety Code, section 11057, subdivision (d)(9) and is a dangerous drug under section 4022.

24 14. Hydrocodone is a Schedule II controlled substance as designated by Health and
25 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug under section 4022.

26 15. Lorazepam is a Scheduled IV controlled substance as designated by Health and
27 Safety Code section 11057, subdivision (d)(16) and is a dangerous drug under section 4022.

28 16. Nordiazepam, is an active metabolite of Diazepam, a Schedule IV controlled
substance as designated by Health and Safety Code, section 11057, subdivision (d)(9) and a
dangerous drug under section 4022.

1 c. The facts that led to the conviction are that on December 13, 2008,
2 Respondent erratically changed lanes while driving over the legal speed limit on state route SR-
3 55, south of Dyer Road in Santa Ana, California. A California Highway Patrol (CHP) officer
4 driving behind Respondent initiated an enforcement stop. Upon contact with Respondent, the
5 officer immediately smelled alcohol coming from inside Respondent's car. Respondent admitted
6 to drinking two beers earlier. Respondent was told to exit and stand by the patrol vehicle. While
7 answering the officer's questions, the smell of alcohol emitted from Respondent's breath and
8 person, his speech was slurred, his gait unsteady, and his eyes watery. Respondent failed to
9 perform a series of field sobriety tests as explained and demonstrated. Respondent provided
10 breath samples for the preliminary alcohol screen (PAS), which indicated a BAC of .115 percent
11 and .117 percent after three minutes. Respondent was subsequently arrested and transported to
12 the Orange County Jail, where he provided a blood sample, which tested a BAC of .12 percent.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(March 3, 2014 Conviction for Corporal Injury on Spouse on November 24, 2013)**

15 22. Respondent has subjected his pharmacy technician registration to discipline under
16 sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is substantially
17 related to the qualifications, functions, and duties of a registered pharmacy technician. The
18 circumstances are as follows:

19 a. On March 3, 2014, in a criminal proceeding entitled *The People of the*
20 *State of California vs. Luis Manuel Hernandez*, in Riverside County Superior Court, Southwest
21 Justice Center, Criminal Division Case Number SWM1401008, Respondent was convicted on
22 his plea of guilty to violating Penal Code section 273.5, subdivision (a), corporal injury on
23 spouse, a misdemeanor.

24 b. As a result of the conviction, on March 3, 2014, Respondent was
25 sentenced to be committed to the custody of the Riverside County Sheriff for 20 days, to be
26 served in the work release program. Respondent was granted 36 months summary probation
27 subject to protective order conditions. Respondent was ordered to perform 20 hours of
28 community service through alternative sentencing program and attend and complete a 52-week

1 domestic violence batterers' treatment program. Respondent was also ordered to pay fines and
2 fees.

3 c. The facts that led to the conviction are that on November 24, 2013,
4 Respondent inflicted corporal injury resulting in a traumatic condition upon his spouse.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(May 14, 2014 Conviction for Driving Under the Influence of Drugs on January 14, 2014)**

7 23. Respondent has subjected his pharmacy technician registration to discipline under
8 sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is substantially
9 related to the qualifications, functions, and duties of a registered pharmacy technician. The
10 circumstances are as follows:

11 a. On May 14, 2014, in a criminal proceeding entitled *The People of the*
12 *State of California v. Luis Manuel Hernandez*, in Riverside County Superior Court, Southwest
13 Justice Center, Criminal Division Case Number SWM1401481, Respondent was convicted on
14 his plea of guilty to violating VC section 23152, subdivision (e), driving while under the
15 influence of drugs, a misdemeanor. Respondent admitted and the court found true the allegation
16 that under VC sections 23626 and 23540, within ten years of violating VC section 23152,
17 subdivision (e), mentioned above, on December 13, 2008, Respondent committed a separate
18 violation of VC section 23152, subdivisions (a), DUI, and (b), driving with a BAC of 0.08
19 percent or more, both misdemeanors resulting in a conviction on January 12, 2009, in case
20 number 09CM00051, detailed in paragraph 21, above.

21 b. As a result of the conviction, on May 14, 2014, Respondent was sentenced
22 to be committed to the custody of the Riverside County Sheriff for 30 days, with credit for one
23 day served and 29 days to be served under the work release program. Respondent was granted 48
24 months summary probation under standard alcohol conditions. Respondent was ordered to pay a
25 fine and penalty assessment. Respondent was also ordered to attend and satisfactorily complete
26 an 18-month multiple offender DUI program.

27 c. The facts that led to the conviction are that on January 14, 2014, Respondent
28 was driving erratically and failing to maintain his lane on interstate freeway I-15 in Temecula,

1 California. A United States Marshall deputy driving behind Respondent's vehicle noticed
2 Respondent's unsafe driving maneuvers and initiated an enforcement stop. A CHP officer
3 responded to Respondent's location. Upon contact with Respondent, the CHP officer noticed
4 Respondent's slurred speech and bloodshot eyes. Respondent denied having any alcoholic drinks
5 and the CHP officer did not smell alcohol either from Respondent or his car. When told to exit
6 his vehicle, Respondent unsteadily walked toward the rear of the vehicle. While talking with the
7 CHP officer, Respondent appeared drowsy and was swaying. Respondent admitted to taking
8 medication the night before but not that morning. Respondent failed to perform the series of field
9 sobriety tests as explained and demonstrated. Respondent consented to a PAS test, which
10 indicated no measurable alcohol in his system. However, Respondent's pulse was approximately
11 100 beats per minute. Respondent was subsequently arrested and transported to CHP's area
12 office in Temecula, where he provided a blood sample, which upon testing indicated positive for
13 Alprazolam, Clonazepam, Diazepam, Hydrocodone, Lorazepam, Nordiazepam, Oxazepam,
14 Oxycodone, Temazepam, and 7-Aminoclonazepam.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Dangerous Use of Drugs and Alcohol)**

17 24. Respondent has subjected his pharmacy technician registration to discipline under
18 section 4301, subdivision (h) in that on December 13, 2008, he used alcohol, as described in
19 paragraph 21, above, and on January 14, 2014, he used drugs, as described in paragraph 23,
20 above, which are incorporated by reference, to the extent and in a manner that was dangerous
21 and injurious to himself and to the public.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Conviction of Alcohol Related Misdemeanors)**

24 25. Respondent has subjected his pharmacy technician registration to discipline under
25 Code section 4301, subdivision (k) in that on January 12, 2009, he was convicted of more than
26 one misdemeanor involving the use or consumption of alcohol.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Conduct That Would Have Warranted Denial of a License)**

3 26. Respondent has subjected his pharmacy technician registration to discipline under
4 Code section 4301, subdivision (p), in that Respondent was convicted of four misdemeanors,
5 conduct that would have warranted the denial of a pharmacy technician registration under Code
6 section 480, subdivision (a)(1), as detailed in paragraphs 21 to 23, above.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Misrepresentation on License Renewal Application)**

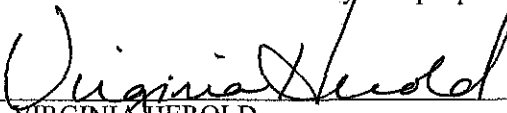
9 27. Respondent has subjected his pharmacy technician registration to discipline under
10 Code section 4301, subdivision (g), in that Respondent falsely stated on his October 21, 2014,
11 Pharmacy Technician Registration Renewal Application that he had not been convicted of any
12 crime in any state since he last renewed his license, when, in fact, Respondent had been
13 convicted on March 3, 2014, for corporal injury on spouse and on May 14, 2014, for driving
14 under the influence of drugs, as detailed in paragraphs 22 to 23, above.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78828,
19 issued to Luis Manuel Hernandez;
- 20 2. Ordering Luis Manuel Hernandez to pay the Board of Pharmacy the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 2/17/16


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

SD2015700280

1 KAMALA D. HARRIS
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13 **LUIS MANUEL HERNANDEZ**
27657 Brentstone Way
14 Murietta, CA 92563

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 78828**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On October 18, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 78828 to Luis Manuel Hernandez (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 November 30, 2016, unless renewed.

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1 **JURISDICTION**

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3 Consumer Affairs, under the authority of the following laws. All section references are to the
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6 be suspended or revoked.

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9 license by operation of law or by order or decision of the board or a court of law,
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11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 4301 states:

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

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26 (h) The administering to oneself, of any controlled substance, or the use of
27 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
28 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.

29

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1 (k) The conviction of more than one misdemeanor or any felony involving
2 the use, consumption, or self-administration of any dangerous drug or alcoholic
3 beverage, or any combination of those substances.

4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of
6 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
7 States Code regulating controlled substances or of a violation of the statutes of
8 this state regulating controlled substances or dangerous drugs shall be conclusive
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10 shall be conclusive evidence only of the fact that the conviction occurred. The
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19 probation is made suspending the imposition of sentence, irrespective of a
20 subsequent order under section 1203.4 of the Penal Code allowing the person to
21 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
22 the verdict of guilty, or dismissing the accusation, information, or indictment.

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24 (p) Actions or conduct that would have warranted denial of a license.

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26 REGULATORY PROVISIONS

27 8. California Code of Regulations, title 16, section 1769, states:

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(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such person and
his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

(4) Whether the licensee has complied with all terms of parole,
probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

7 **COST RECOVERY**

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

14 **DRUGS AT ISSUE**

15 11. Alprazolam is a Schedule IV controlled substance as designated by Health and
16 Safety Code section 11057, subdivision (d)(1) and is a dangerous drug under section 4022.

17 12. Clonazepam is a Schedule IV controlled substance as designated by Health and
18 Safety Code, section 11057, subdivision (d)(7) and is a dangerous drug under section 4022.

19 13. Diazepam is a Schedule IV controlled substance as designated by Health and
20 Safety Code, section 11057, subdivision (d)(9) and is a dangerous drug under section 4022.

21 14. Hydrocodone is a Schedule II controlled substance as designated by Health and
22 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug under section 4022.

23 15. Lorazepam is a Scheduled IV controlled substance as designated by Health and
24 Safety Code section 11057, subdivision (d)(16) and is a dangerous drug under section 4022.

25 16. Nordiazepam, is an active metabolite of Diazepam, a Schedule IV controlled
26 substance as designated by Health and Safety Code, section 11057, subdivision (d)(9) and a
27 dangerous drug under section 4022.

28 ///

1 c. The facts that led to the conviction are that on December 13, 2008,
2 Respondent erratically changed lanes while driving over the legal speed limit on state route SR-
3 55, south of Dyer Road in Santa Ana, California. A California Highway Patrol (CHP) officer
4 driving behind Respondent initiated an enforcement stop. Upon contact with Respondent, the
5 officer immediately smelled alcohol coming from inside Respondent's car. Respondent admitted
6 to drinking two beers earlier. Respondent was told to exit and stand by the patrol vehicle. While
7 answering the officer's questions, the smell of alcohol emitted from Respondent's breath and
8 person, his speech was slurred, his gait unsteady, and his eyes watery. Respondent failed to
9 perform a series of field sobriety tests as explained and demonstrated. Respondent provided
10 breath samples for the preliminary alcohol screen (PAS), which indicated a BAC of .115 percent
11 and .117 percent after three minutes. Respondent was subsequently arrested and transported to
12 the Orange County Jail, where he provided a blood sample, which tested a BAC of .12 percent.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(March 3, 2014 Conviction for Corporal Injury on Spouse on November 24, 2013)**

15 22. Respondent has subjected his pharmacy technician registration to discipline under
16 sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is substantially
17 related to the qualifications, functions, and duties of a registered pharmacy technician. The
18 circumstances are as follows:

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24 b. As a result of the conviction, on March 3, 2014, Respondent was
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26 served in the work release program. Respondent was granted 36 months summary probation
27 subject to protective order conditions. Respondent was ordered to perform 20 hours of
28 community service through alternative sentencing program and attend and complete a 52-week

1 domestic violence batterers' treatment program. Respondent was also ordered to pay fines and
2 fees.

3 c. The facts that led to the conviction are that on November 24, 2013,
4 Respondent inflicted corporal injury resulting in a traumatic condition upon his spouse.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(May 14, 2014 Conviction for Driving Under the Influence of Drugs on January 14, 2014)**

7 23. Respondent has subjected his pharmacy technician registration to discipline under
8 sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is substantially
9 related to the qualifications, functions, and duties of a registered pharmacy technician. The
10 circumstances are as follows:

11 a. On May 14, 2014, in a criminal proceeding entitled *The People of the*
12 *State of California v. Luis Manuel Hernandez*, in Riverside County Superior Court, Southwest
13 Justice Center, Criminal Division Case Number SWM1401481, Respondent was convicted on
14 his plea of guilty to violating VC section 23152, subdivision (e), driving while under the
15 influence of drugs, a misdemeanor. Respondent admitted and the court found true the allegation
16 that under VC sections 23626 and 23540, within ten years of violating VC section 23152,
17 subdivision (e), mentioned above, on December 13, 2008, Respondent committed a separate
18 violation of VC section 23152, subdivisions (a), DUI, and (b), driving with a BAC of 0.08
19 percent or more, both misdemeanors resulting in a conviction on January 12, 2009, in case
20 number 09CM00051, detailed in paragraph 21, above.

21 b. As a result of the conviction, on May 14, 2014, Respondent was sentenced
22 to be committed to the custody of the Riverside County Sheriff for 30 days, with credit for one
23 day served and 29 days to be served under the work release program. Respondent was granted 48
24 months summary probation under standard alcohol conditions. Respondent was ordered to pay a
25 fine and penalty assessment. Respondent was also ordered to attend and satisfactorily complete
26 an 18-month multiple offender DUI program.

27 c. The facts that led to the conviction are that on January 14, 2014, Respondent
28 was driving erratically and failing to maintain his lane on interstate freeway I-15 in Temecula,

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2 Respondent's unsafe driving maneuvers and initiated an enforcement stop. A CHP officer
3 responded to Respondent's location. Upon contact with Respondent, the CHP officer noticed
4 Respondent's slurred speech and bloodshot eyes. Respondent denied having any alcoholic drinks
5 and the CHP officer did not smell alcohol either from Respondent or his car. When told to exit
6 his vehicle, Respondent unsteadily walked toward the rear of the vehicle. While talking with the
7 CHP officer, Respondent appeared drowsy and was swaying. Respondent admitted to taking
8 medication the night before but not that morning. Respondent failed to perform the series of field
9 sobriety tests as explained and demonstrated. Respondent consented to a PAS test, which
10 indicated no measurable alcohol in his system. However, Respondent's pulse was approximately
11 100 beats per minute. Respondent was subsequently arrested and transported to CHP's area
12 office in Temecula, where he provided a blood sample, which upon testing indicated positive for
13 Alprazolam, Clonazepam, Diazepam, Hydrocodone, Lorazepam, Nordiazepam, Oxazepam,
14 Oxycodone, Temazepam, and 7-Aminoclonazepam.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Dangerous Use of Drugs and Alcohol)**

17 24. Respondent has subjected his pharmacy technician registration to discipline under
18 section 4301, subdivision (h) in that on December 13, 2008, he used alcohol, as described in
19 paragraph 21, above, and on January 14, 2014, he used drugs, as described in paragraph 23,
20 above, which are incorporated by reference, to the extent and in a manner that was dangerous
21 and injurious to himself and to the public.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Conviction of Alcohol Related Misdemeanors)**

24 25. Respondent has subjected his pharmacy technician registration to discipline under
25 Code section 4301, subdivision (k) in that on January 12, 2009, he was convicted of more than
26 one misdemeanor involving the use or consumption of alcohol.

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SIXTH CAUSE FOR DISCIPLINE

(Conduct That Would Have Warranted Denial of a License)

26. Respondent has subjected his pharmacy technician registration to discipline under Code section 4301, subdivision (p), in that Respondent was convicted of four misdemeanors, conduct that would have warranted the denial of a pharmacy technician registration under Code section 480, subdivision (a)(1), as detailed in paragraphs 21 to 23, above.

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78828, issued to Luis Manuel Hernandez;
- 2. Ordering Luis Manuel Hernandez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 9/12/15

Virginia Herold

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

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