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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 Accusation Against:
12 **MICHAEL JOSEPH HERNANDEZ**
2106 Lansbury St.
13 Santa Rosa, CA 95404
14 **Pharmacy Technician Registration No.**
TCH 87747,
15
16 Respondent.

Case No. 5573
A C C U S A T I O N

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18 Complainant Virginia Herold alleges:

19 **PARTIES**

- 20 1. Complainant brings this accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On December 12, 2008, the Board issued Pharmacy Technician Registration No.
23 TCH 87747 to respondent Michael Joseph Hernandez. This pharmacy technician registration was
24 in full force and effect at all times relevant to the charges brought in this accusation and will
25 expire on December 31, 2016, unless renewed.

26 **JURISDICTION**

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

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4. Section 4300 states in part:

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

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

“(1) Suspending judgment.

“(2) Placing him or her upon probation.

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

“(4) Revoking his or her license.

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

5. Section 4300.1 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 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.”

STATUTORY AND REGULATORY AUTHORITY

6. Section 490 states in part:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

7. Section 4301 states in 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

///

1 following:

2 ...

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

8 ...

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

12 “(l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter.

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

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

21 **COST RECOVERY**

22 9. Section 125.3 states in part:

23 “(a) Except as otherwise provided by law, in any order issued in resolution of a
24 disciplinary proceeding before any board within the department or before the Osteopathic
25 Medical Board, upon request of the entity bringing the proceedings, the administrative law judge
26 may direct a licentiate found to have committed a violation or violations of the licensing act to
27 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

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1 **DRUGS**

2 10. Diazepam, also known by the trade name Valium, is a Schedule III controlled
3 substance under Health and Safety Code section 11057, subdivision (d)(9), and a dangerous drug
4 within the meaning of Business and Professions Code section 4022. It is used for the
5 management of anxiety disorders.

6 11. Norco, a trade name for hydrocodone with acetaminophen, is a Schedule III
7 controlled substance under Health and Safety Code section 11056, subdivision (e)(3), and a
8 dangerous drug within the meaning of Business and Professions Code section 4022.

9 Hydrocodone is an opioid pain medication. Norco is used to relieve moderate to severe pain.

10 12. Xanax, a trade name for Alprazolam, is a Schedule IV controlled substance under
11 Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug within the
12 meaning of Business and Professions Code section 4022. It is used for the management of
13 anxiety disorders.

14 **FACTS AND CAUSES FOR DISCIPLINE**

15 **September 2014 Incident**

16 13. On September 16, 2014, sheriff detectives saw a car swerving on the road and
17 driving erratically. This car pulled into a hospital parking lot and respondent, who was driving,
18 needed three attempts to properly park the car.

19 14. When the detectives walked up to respondent, the car was idling, respondent's
20 head was forward, and he looked like he was sleeping. He was wearing a hospital name tag and
21 had a hospital coat in the car. Respondent said he had vertigo and was having an "episode."
22 Respondent said he was a pharmacy technician at the hospital and was going to the emergency
23 room after his shift. Respondent said he had taken Norco, Xanax, another anti-depressant drug,
24 and a testosterone booster before he drove. He attributed his poor driving to the vertigo and a
25 concussion several months before. He gave the detectives some pills he was carrying loosely in
26 his pocket. Respondent said he had a prescription for Norco. He said at one time he had an
27 addiction problem with Norco, but now only takes two a day. After performing a series of field
28 sobriety tests, respondent was arrested.

1 **April 2015 Incident**

2 22. On September 16, 2014, an off-duty highway patrol officer saw a car severely
3 weaving on the road causing other cars to swerve out of its way. The car also did not move
4 through a green light for about five to seven seconds.

5 23. Respondent, who was driving the car with his two minor children as passengers,
6 explained that his poor driving may have been from chewing tobacco which was making him
7 queasy. When he got out of the car, he was unsteady and appeared lethargic. He performed
8 poorly on a series of field sobriety tests. He tested positive for Diazepam, Alprazolam, and
9 Hydrocodone.

10 24. On January 26, 2016, respondent pled no contest to driving under the influence of
11 drugs (Veh. Code, § 23152, subd. (e)), a misdemeanor, and admitted that a minor under 14 was a
12 passenger during the offense (Veh. Code, § 23572, subd. (a)).

13 **Fourth Cause for Discipline**
14 **Unprofessional Conduct – Use of Controlled Substance or Dangerous Drug**
Business and Professions Code section 4301, subdivision (h)

15 25. The allegations of paragraphs 22-24 are realleged and incorporated by reference as
16 if fully set forth.

17 26. Respondent has subjected his pharmacy technician registration to discipline for the
18 unprofessional conduct of using a dangerous drug in a manner to be dangerous or injurious to
19 himself or another (Bus. & Prof. Code, § 4301, subd. (h)). Respondent drove a car under the
20 influence of drugs while a minor under 14 was a passenger.

21 **Fifth Cause for Discipline**
22 **Conviction**
Business and Professions Code section 490, subdivision (a)

23 27. The allegations of paragraphs 22-24 are realleged and incorporated by reference as
24 if fully set forth.

25 28. Respondent has subjected his pharmacy technician registration to discipline for
26 being convicted of a crime (Bus. & Prof. Code, § 490, subd. (a)). Respondent was convicted of
27 driving under the influence of drugs (Veh. Code, § 23152, subd. (e)), a misdemeanor.

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

DATED: 5/4/16

Virginia Herold

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

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