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

In the Matter of the Second Amended
Accusation Against:

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

**Pharmacy Technician Registration No. TCH
59719**

Respondent.

Case No. 4797

OAH No. 2013110452

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 6, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4797 against Heather E. Labandeira Garcia (Respondent) before the Board of Pharmacy. On or about June 9, 2014, Complainant filed a First Amended Accusation. On or about July 23, 2014, Complainant filed a Second Amended Accusation. (Accusations attached as Exhibit A.)

2. On or about November 29, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 59719 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4797 and expired on August 31, 2014.

1 3. On or about September 26, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4797, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: P.O. Box 807, Hanford, CA 93232.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about October 3, 2013, Respondent signed and returned a Notice of Defense,
11 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
12 address of record and it informed her that an administrative hearing in this matter was scheduled
13 for August 12, 2014. At the request of Respondent, the Notice of Hearing was also served by
14 mail at 1366 Cortner Street, Hanford, CA 93230. That Notice of Hearing came back with a
15 forwarding address of 467 Persimmon Drive, Brentwood, CA, 94513, which is the address used
16 to again serve the Notice of Hearing.

17 Respondent failed to appear at that hearing.

18 6. Government Code section 11506 states, in pertinent part:

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

24 7. California Government Code section 11520 states, in pertinent part:

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

29 8. Pursuant to its authority under Government Code section 11520, the Board finds
30 Respondent is in default. The Board will take action without further hearing and, based on the
31 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Second Amended Accusation No.
3 4797, finds that the charges and allegations in Second Amended Accusation No. 4797, are
4 separately and severally, found to be true and correct by clear and convincing evidence.

5 9. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$4,122.00 as of July 30, 2014.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Heather E. Labandeira Garcia
10 has subjected her Pharmacy Technician Registration No. TCH 59719 to discipline.

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

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

15 a. Business and Profession Code section 4301(l) - Criminal Convictions

16 b. Business and Professions Code section 4301(h) -- Use of Controlled Substances in a
17 Manner Dangerous or Injurious to Oneself and Others

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ORDER

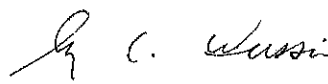
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 59719, heretofore issued to Respondent Heather E. Labandeira Garcia, is revoked.

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 on December 3, 2014.

It is so ORDERED November 3, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

11527559.DOC
DOJ Matter ID:SA2013111876

Attachment:
Exhibit A: Accusation, First Amended Accusation, Second Amended Accusation

Exhibit A

Accusation, First Amended Accusation, Second Amended Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Second Amended
12 Accusation Against:

Case No. 4797

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

SECOND AMENDED
ACCUSATION

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

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Second 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.

27 ///

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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
19 a decision suspending or revoking the license.

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

21 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
22 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
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 7. Section 4022 of the Code states

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

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

26 (b) Any device that bears the statement: "Caution: federal law restricts this device to
27 sale by or on the order of a _____," "Rx only," or words of similar import, the
28 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 (I), in that Respondent was convicted of crimes which are substantially related to the
21 qualifications, functions and duties of a licensed pharmacy technician, as follows:

22 a. On or about June 13, 2014, in the case of *People v. Heather Elizabeth Garcia, aka*
23 *Heather Labandeira*, (Super. Ct. Kings County, 2014, Case No. 14CM0648), Respondent was
24 convicted by the Court on her plea of nolo contendere of violating Vehicle Code section 23152(a)
25 (driving while under the influence of alcohol or drugs, or their combined influence), a
26 misdemeanor. The circumstances of the crime are as follows: On or about November 5, 2013, at
27 approximately 10:57 p.m., Hanford Police Officer N.A. was dispatched to a traffic collision at
28 Simas school in Hanford. When the officer arrived, he observed the Respondent's vehicle was on
the sidewalk and had pushed the school fence in. Respondent stated that while driving from her

1 dad's house she had lost control of her vehicle. While speaking with Respondent, the officer
2 noticed her speech was slurred, and Respondent stated that she had consumed an alcoholic
3 cocktail that afternoon and Ambien earlier that night. Respondent failed the field sobriety tests
4 administered by the officer, and a blood sample revealed that Respondent had alcohol and
zolpidem (Ambien) in her system.

5 b. On or about August 16, 2013, in the case of *People v. Heather Elizabeth Garcia, aka*
6 *Heather Labandeira*, (Super. Ct. Kings County, 2013, Case No. 13CM1669), Respondent was
7 convicted by the Court on her plea of nolo contendere of violating Vehicle Code section 23152(a)
8 (driving while under the influence of alcohol or drugs, or their combined influence), a
9 misdemeanor. The crime is substantially related to the qualifications, functions or duties of a
10 licensed pharmacy technician. The circumstances are as follows: On or about March 8, 2013,
11 officers were dispatched to Respondent's residence regarding a traffic collision involving
12 Respondent. Respondent's husband stated that Respondent was under the influence of a narcotic
13 and left the scene after striking a parked white pick-up. A check of the area turned up negative
14 for any type of collision involving Respondent's vehicle, however, the officer contacted
15 Respondent, who was sitting in her vehicle with the ignition on and passed out behind the wheel.
16 While speaking with Respondent, the officer noticed her speech was slurred, and Respondent
17 stated that she had taken some Soma. Respondent failed the field sobriety tests administered by
the officer, and a blood sample revealed that Respondent had hydrocodone in her system.

18 SECOND CAUSE FOR DISCIPLINE

19 (Use of Controlled Substances or Dangerous Drugs to the Extent or in 20 a Manner Dangerous or Injurious to Oneself and Others)

21 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
22 subdivision (h), in that Respondent used controlled substances and dangerous drugs to the extent
23 or in a manner dangerous or injurious to herself, others, and the public, as set forth in paragraph
13, above, and as set forth below:

24 a. On or about August 22, 2012, Hanford police officers initiated a traffic stop of
25 Respondent's vehicle for failing to stop at a marked limit line. The officers noticed that
26 Respondent had red/watery eyes, her speech was slow and slurred. Respondent stated that she
27 hadn't consumed any alcohol, but had taken one Soma pill and one Norco pill. Officers
28 administered field sobriety tests, which Respondent failed. A blood sample revealed that

1 Respondent had the following substances in her system: carisoprodol, meprobamate,
2 hydromorphone, citalopram, and zolpidem.

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

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 59719,
19 issued to Heather E. Labandeira Garcia;
- 20 2. Ordering Heather E. Labandeira Garcia to pay the Board of Pharmacy the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
22 section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 7/23/14

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

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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
19 a decision suspending or revoking the license.

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

21 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
22 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
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 ...
28

1 (I) 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 7. Section 4022 of the Code states

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

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

26 (b) Any device that bears the statement: "Caution: federal law restricts this device to
27 sale by or on the order of a _____," "Rx only," or words of similar import, the
28 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 licensee 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
28

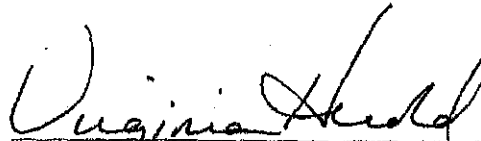
1 Respondent had hydrocodone and hydromorphone in her system. The amount of hydrocodone
2 was .17 mg/L, and the effective level is .002-.05.

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.

12
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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1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4797

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

A C C U S A T I O N

16 **Pharmacy Technician Registration No. TCH**
17 **59719**

Respondent.

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 November 29, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 59719 to Heather E. Labandeira Garcia (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought

25 **JURISDICTION**

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

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

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

11 5. Section 4300.1 of the Code states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
13 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
14 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
15 a decision suspending or revoking the license.

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

17 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
18 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

19 ...

20 (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
21 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
22 the person to conduct with safety to the public the practice authorized by the license.

23 7. Section 4022 of the Code states

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

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

28 (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
2 use of the device.

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

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

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

13 COST RECOVERY

14 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 DRUGS AT ISSUE

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

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

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

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

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

4 **CAUSE FOR DISCIPLINE**

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

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

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

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

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1 c. On or about March 8, 2013, officers were dispatched to Respondent's residence
2 regarding a traffic collision involving Respondent. Respondent's husband stated that Respondent
3 was under the influence of a narcotic and left the scene after striking a parked white pick-up. A
4 check of the area turned up negative for any type of collision involving Respondent's vehicle,
5 however, the officer contacted Respondent, who was sitting in her vehicle with the ignition on
6 and passed out behind the wheel. While speaking with Respondent, the officer noticed her speech
7 was slurred, and Respondent stated that she had taken some Soma. Respondent failed the field
8 sobriety tests administered by the officer, and a blood sample revealed that Respondent had
9 hydrocodone in her system.

10 PRAYER

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 59719,
14 issued to Heather E. Labandeira Garcia.;
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16 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: 9/6/13 Virginia Herold
22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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