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

In the Matter of the Accusation Against:  
  
**LUIS MANUEL HERNANDEZ**  
27657 Brentstone Way  
Murietta, CA 92563  
  
Pharmacy Technician Registration No. TCH  
78828  
  
Respondent.

Case No. 5388  
  
OAH No. 2016020161  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 12, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5388 against Luis Manuel Hernandez (Respondent) before the Board of Pharmacy. On or about February 17, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed First Amended Accusation No. 5388 against Respondent before the Board of Pharmacy. (First Amended Accusation attached as Exhibit A.)
2. On or about October 18, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 78828 to Respondent. The Pharmacy Technician Registration

1 was in full force and effect at all times relevant to the charges brought in First Amended  
2 Accusation No. 5388 and will expire on November 30, 2016, unless renewed.

3 3. On or about September 30, 2015, Respondent was served by Certified and First Class  
4 Mail copies of the Accusation No. 5388, Statement to Respondent, Notice of Defense, Request  
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
8 record was and is: 27657 Brentstone Way, Murietta, CA 92563.

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

12 5. On or about October 29, 2015, Respondent signed and returned a Notice of Defense,  
13 requesting a hearing in this matter.

14 6. On or about March 1, 2016, Respondent was served by Certified and First Class Mail  
15 copies of the First Amended Accusation No. 5388, Supplemental Statement to Respondent,  
16 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
17 and 11507.7) at Respondent's address of record.

18 7. Service of the First Amended Accusation was effective as a matter of law under the  
19 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions  
20 Code section 124, and Government Code section 11507.

21 8. A Notice of Hearing was served by Certified and First Class Mail at Respondent's  
22 address of record and it informed him that an administrative hearing in this matter was scheduled  
23 for April 28, 2016. Respondent failed to appear at that hearing.

24 9. Government Code section 11506(c) states, in pertinent part:

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

///

1 10. Government Code section 11520(a) states, in pertinent part:

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

5 11. Pursuant to its authority under Government Code section 11520, the Board finds  
6 Respondent is in default. The Board will take action without further hearing and, based on the  
7 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
8 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
9 file at the Board's offices regarding the allegations contained in First Amended Accusation No.  
10 5388, finds that the charges and allegations in First Amended Accusation No. 5388, are separately  
11 and severally, found to be true and correct by clear and convincing evidence.

12 12. Taking official notice of its own internal records, pursuant to Business and

13 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
14 and Enforcement of this matter is \$4,872.30 as of April 18, 2016.

15 DETERMINATION OF ISSUES

16 1. Based on the foregoing findings of fact, Respondent Luis Manuel Hernandez has  
17 subjected his Pharmacy Technician Registration No. TCH 78828 to discipline.

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

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

- 22 a. Criminal Convictions for Driving While Under the Influence of Alcohol (DUI) and  
23 Driving with a Blood Alcohol Concentration of .08 Percent or More (Bus. & Prof.  
24 Code, §§ 490 and 4301, subd. (l));
- 25 b. Criminal Conviction for Corporal Injury on Spouse (Bus. & Prof. Code, §§ 490 and  
26 4301, subd. (l));
- 27 c. Criminal Conviction for Driving Under the Influence of Drugs (Bus. & Prof. Code,  
28 §§ 490 and 4301, subd. (l));

- 1 d. Unprofessional Conduct - Dangerous Use of Drugs and Alcohol (Bus. & Prof. Code,  
2 § 4301, subd. (h));  
3 e. Unprofessional Conduct - Convictions Involving Alcohol-Related Misdemeanors  
4 (Bus. & Prof. Code, § 4301, subd. (k));  
5 f. Unprofessional Conduct - Actions that Would Have Warranted Denial of a License  
6 (Bus. & Prof. Code, § 4301, subd. (p));  
7 g. Unprofessional Conduct - Misrepresentation on License Renewal Application  
8 (Bus. & Prof. Code, § 4301, subd. (g));

9 ORDER

10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 78828, heretofore  
11 issued to Respondent Luis Manuel Hernandez, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
13 written motion requesting that the Decision be vacated and stating the grounds relied on within  
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective at 5:00 p.m. on September 9, 2016.

17 It is so ORDERED on August 10, 2016.

18 BOARD OF PHARMACY  
19 DEPARTMENT OF CONSUMER AFFAIRS  
20 STATE OF CALIFORNIA

21 

22  
23 By

24 \_\_\_\_\_  
25 Amy Gutierrez, Pharm.D.  
26 Board President

27 DOJ Matter ID:SD2015700280

28 Attachment:  
Exhibit A: First Amended Accusation

# Exhibit A

First Amended Accusation

(Default Decision and Order)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
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P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

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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**JURISDICTION**

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

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

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.

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**STATUTORY PROVISIONS**

6. Section 482 states:

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

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

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

7. Section 4301 states:

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 following:

....

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

(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.

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

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

.....

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

.....

**REGULATORY PROVISIONS**

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.

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12 **COST RECOVERY**

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

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21 **DRUGS AT ISSUE**

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

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

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

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

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

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 17. Oxazepam is a Schedule IV controlled substance as designated by Health and  
2 Safety Code section 11057, subdivision (d)(23) and is a dangerous drug under section 4022.

3 18. Oxycodone is a Schedule II controlled substance as designated by Health and  
4 Safety Code Section 11055(b)(1)(M) and is a dangerous drug under section 4022.

5 19. Temazepam, is a depressant in the benzodiazepine family and is a Schedule IV  
6 controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1)  
7 and a dangerous drug under section 4022.

8 20. 7-Aminoclonazepam, is a major metabolite of Clonazepam, a Schedule IV  
9 controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(7)  
10 and a dangerous drug under section 4022.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Jan. 12, 2009 Conviction for Driving with a BAC .08 Percent or More on Dec. 13, 2008)**

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

17 a. On January 12, 2009, in a criminal proceeding entitled *The People of the*  
18 *State of California v. Luis Manuel Hernandez*, in the Orange County Superior Court, Central  
19 Justice Center, Criminal Division Case Number 09CM00051, Respondent was convicted on his  
20 plea of guilty to violating Vehicle Code (VC) section 23152, subdivisions (a), driving while  
21 under the influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC)  
22 of 0.08 percent or more, both misdemeanors.

23 b. As a result of the convictions, on January 12, 2009, Respondent was  
24 sentenced to three years informal probation under standard alcohol conditions. Respondent was  
25 ordered to pay fines, fees, restitution, and assessments, and attend and satisfactorily complete a  
26 three-month first offender alcohol program and a Mothers Against Drunk Driving Victim's  
27 Impact Panel session.

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 (1), 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

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

SD2015700280

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
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6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

12 In the Matter of the Accusation Against:

Case No. 5388

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.

26 ///

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28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) 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 (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.

/// . . . .



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  
9 evidence of unprofessional conduct. In all other cases, the record of conviction  
10 shall be conclusive evidence only of the fact that the conviction occurred. The  
11 board may inquire into the circumstances surrounding the commission of the  
12 crime, in order to fix the degree of discipline or, in the case of a conviction not  
13 involving controlled substances or dangerous drugs, to determine if the conviction  
14 is of an offense substantially related to the qualifications, functions, and duties of  
15 a licensee under this chapter. A plea or verdict of guilty or a conviction following  
16 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this  
17 provision. The board may take action when the time for appeal has elapsed, or the  
18 judgment of conviction has been affirmed on appeal or when an order granting  
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.

23 .....

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

25 .....

### 26 REGULATORY PROVISIONS

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

28 .....

(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.

#### 9 COST RECOVERY

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

#### 16 DRUGS AT ISSUE

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

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

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

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

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

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

///

1 17. Oxazepam is a Schedule IV controlled substance as designated by Health and  
2 Safety Code section 11057, subdivision (d)(23) and is a dangerous drug under section 4022.

3 18. Oxycodone is a Schedule II controlled substance as designated by Health and  
4 Safety Code Section 11055(b)(1)(M) and is a dangerous drug under section 4022.

5 19. Temazepam, is a depressant in the benzodiazepine family and is a Schedule IV  
6 controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1)  
7 and a dangerous drug under section 4022.

8 20. 7-Aminoclonazepam, is a major metabolite of Clonazepam, a Schedule IV  
9 controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(7)  
10 and a dangerous drug under section 4022.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Jan. 12, 2009 Conviction for Driving with a BAC .08 Percent or More on Dec. 13, 2008)**

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

17 a. On January 12, 2009, in a criminal proceeding entitled *The People of the*  
18 *State of California v. Luis Manuel Hernandez*, in the Orange County Superior Court, Central  
19 Justice Center, Criminal Division Case Number 09CM00051, Respondent was convicted on his  
20 plea of guilty to violating Vehicle Code (VC) section 23152, subdivisions (a), driving while  
21 under the influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC)  
22 of 0.08 percent or more, both misdemeanors.

23 b. As a result of the convictions, on January 12, 2009, Respondent was  
24 sentenced to three years informal probation under standard alcohol conditions. Respondent was  
25 ordered to pay fines, fees, restitution, and assessments, and attend and satisfactorily complete a  
26 three-month first offender alcohol program and a Mothers Against Drunk Driving Victim's  
27 Impact Panel session.

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:

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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**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.

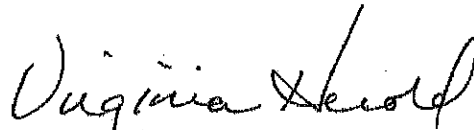
**PRAYER**

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

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