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

In the Matter of the Accusation Against:  
  
**MICHAEL JOSEPH HERNANDEZ**  
**2106 Lansbury Street**  
**Santa Rosa, CA 95404**  
  
**Pharmacy Technician Registration No. TCH**  
**87747**  
  
Respondent.

Case No. 5573

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 4, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5573 against Michael Joseph Hernandez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about December 12, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 87747 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5573 and will expire on December 31, 2016, unless renewed.

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1           3.     On or about June 1, 2016, Respondent was served by Certified and First Class Mail  
2 copies of the Accusation No. 5573, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board. Respondent's address of record was  
6 and is: 2106 Lansbury Street, Santa Rosa, CA 95404.

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

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

16          6.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
18 5573.

19          7.     California Government Code section 11520(a) states, in pertinent part:

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

24          8.     Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on the  
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
28 file at the Board's offices regarding the allegations contained in Accusation No. 5573, finds that  
the charges and allegations in Accusation No. 5573, are separately and severally, found to be true  
and correct by clear and convincing evidence.

///

1 9. Taking official notice of its own internal records, pursuant to Business and  
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
3 and Enforcement is \$1,705.00 as of August 3, 2016.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Michael Joseph Hernandez has  
6 subjected his Pharmacy Technician Registration No. TCH 87747 to discipline.

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

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

11 a. Business and Professions Code section 490, subdivision (a) (conviction);

12 b. Business and Professions Code section 4301, subdivision (h) (use of a controlled  
13 substance or dangerous drug);

14 c. Business and Professions Code section 4301, subdivision (k) (more than one  
15 conviction involving a dangerous drug).

16 d. Business and Professions Code section 4301, subdivision (l) (conviction of a  
17 substantially related crime);

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 87747, issued to Respondent Michael Joseph Hernandez, 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 at 5:00 p.m. on October 14, 2016.

It is so ORDERED on September 14, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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DOJ Matter ID:SF2016900290

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(MICHAEL JOSEPH HERNANDEZ)

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar No. 200659  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2143  
Facsimile: (510) 622-2270  
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. 5573

13 **MICHAEL JOSEPH HERNANDEZ**  
2106 Lansbury St.  
Santa Rosa, CA 95404

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

14 Pharmacy Technician Registration No.  
15 TCH 87747,

16 Respondent.

17  
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.

1 4. Section 4300 states in 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  
5 the following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

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

9 "(4) Revoking his or her license.

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

12 5. Section 4300.1 states:

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

18 **STATUTORY AND REGULATORY AUTHORITY**

19 6. Section 490 states in part:

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

24 7. Section 4301 states in part:

25 "The board shall take action against any holder of a license who is guilty of  
26 unprofessional conduct or whose license has been procured by fraud or misrepresentation or  
27 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the

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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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**DRUGS**

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

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

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

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

**FACTS AND CAUSES FOR DISCIPLINE**

**September 2014 Incident**

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

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

1 15. On January 20, 2016, respondent pled to driving under the influence of drugs  
2 (Veh. Code, § 23152, subd. (e)), a misdemeanor.

3 **First Cause for Discipline**  
4 **Unprofessional Conduct – Use of Controlled Substance or Dangerous Drug**  
5 **Business and Professions Code section 4301, subdivision (h)**

6 16. The allegations of paragraphs 13-15 are realleged and incorporated by reference as  
7 if fully set forth.

8 17. Respondent has subjected his pharmacy technician registration to discipline for the  
9 unprofessional conduct of using a dangerous drug in a manner to be dangerous or injurious to  
10 himself or another (Bus. & Prof. Code, § 4301, subd. (h)). Respondent drove a car under the  
11 influence of drugs.

12 **Second Cause for Discipline**  
13 **Conviction**  
14 **Business and Professions Code section 490, subdivision (a)**

15 18. The allegations of paragraphs 13-15 are realleged and incorporated by reference as  
16 if fully set forth.

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

20 **Third Cause for Discipline**  
21 **Unprofessional Conduct – Conviction of a Crime Substantially Related**  
22 **Business and Professions Code section 4301, subdivision (l)**

23 20. The allegations of paragraphs 13-15 are realleged and incorporated by reference as  
24 if fully set forth.

25 21. Respondent has subjected his pharmacy technician registration to discipline for the  
26 unprofessional conduct of being convicted of a crime substantially related to the qualifications,  
27 functions, and duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)).  
28 Respondent drove a car after taking narcotics. He had parked in his employer hospital's parking  
lot and stated that he was planning on working. He was convicted of driving under the influence  
of drugs (Veh. Code, § 23152, subd. (e)), a misdemeanor.

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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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1 **Sixth Cause for Discipline**  
2 **Unprofessional Conduct – More than One Conviction Involving Dangerous Drugs**  
3 **Business and Professions Code section 4301, subdivision (k)**

4 29. The allegations of paragraphs 13-15 and 22-24 are realleged and incorporated by  
5 reference as if fully set forth.

6 30. Respondent has subjected his pharmacy technician registration to discipline for the  
7 unprofessional conduct of being convicted of more than one misdemeanor involving the use of  
8 dangerous drugs (Bus. & Prof. Code, § 4301, subd. (l)). Respondent was convicted on January 20  
9 and 26, 2016, in two separate cases of driving under the influence of drugs (Veh. Code, § 23152,  
10 subd. (e)), a misdemeanor.

11 **Seventh Cause for Discipline**  
12 **Unprofessional Conduct – Conviction of a Crime Substantially Related**  
13 **Business and Professions Code section 4301, subdivision (l)**

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

16 32. Respondent has subjected his pharmacy technician registration to discipline for the  
17 unprofessional conduct of being convicted of a crime substantially related to the qualifications,  
18 functions, and duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)).  
19 Respondent was convicted of driving under the influence of drugs (Veh. Code, § 23152, subd.  
20 (e)), a misdemeanor.

21 **PRAYER**

22 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this  
23 accusation, and that following the hearing, the Board issues a decision:

24 1. Revoking or suspending Pharmacy Technician Registration No. TCH 87747 issued  
25 to respondent;

26 2. Ordering respondent under Business and Professions Code section 125.3 to pay the  
27 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case; and

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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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