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

In the Matter of the Accusation Against:	Case No. 4610
DANIEL MORENO **1510 South Melrose Drive, Apartment 17** **Vista, California 92054** **Pharmacy Technician Registration No. TCH 90486** Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 6, 2009, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 90486 to Daniel Moreno (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2014, unless renewed.

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JURISDICTION

3. This 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 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

". . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 4300.1 of the Code 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 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

7. Section 4301 of the Code 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:

". . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

". . .

"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

". . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

". . . ."

8. Section 11358 of the Health and Safety Code states:

"Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

9. Section 11359 of the Health and Safety Code states:

"Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

COSTS

10. 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. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DRUGS

11. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13) and a dangerous drug pursuant to Code section 4022. It is a hallucinogenic drug.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Attempted Violation of Laws Regulating Controlled Substances)

12. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in that Respondent attempted to possess for sale the controlled substance marijuana in violation of Code section 4060 and Health and Safety Code section 11359; and attempted to

plant, cultivate, harvest, dry, or process marijuana in violation of Health and Safety Code section 11358. The circumstances are as follows:

13. On or about October 11, 2011, deputies from the Mendocino County Sheriff's Office assisted local Fish and Game officers with the service of a search warrant for two parcels of property. The search involved a potential illegal diversion of water from the Eel River to water various marijuana gardens on this property.

14. The deputies arrived at the property and found six marijuana gardens with about 766 budding marijuana plants. They arrested one man in a wooden trimming and drying structure that had large piles of marijuana trimmings and over fifty pounds of packaged bud marijuana in oven bags. There were also hanging marijuana plants and drying trays with completely trimmed wet marijuana buds in four 35-gallon trash cans. They searched a nearby barn and found wet hanging marijuana plants and a "Twister" trim machine that is commonly used to trim marijuana. The deputies searched several structures in the vicinity and found several more marijuana gardens that contained hundreds of budding marijuana plants. The packaged marijuana alone that the deputies found weighed about 61.2 pounds. The deputies found documents that appeared to be pay/owe sheets.

15. Respondent was at the scene and spoke with the deputies. Respondent had arrived four days earlier and said that he planned to make $25 an hour trimming/processing marijuana at the location. Respondent said that he did not have a medical marijuana recommendation and that he was not a caregiver or member of a collective. Respondent said that someone hired Respondent to work at the location for processing marijuana. He admitted to having knowledge of the marijuana growing operation at this location.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Attempted Act of Moral Turpitude)

16. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (f) and (o) in that Respondent attempted to possess marijuana for sale and attempted to cultivate or process marijuana, acts of moral turpitude. The circumstances are described in paragraphs 12-15, above, and are hereby incorporated as if fully set forth herein.

MATTER IN AGGRAVATION

17. To determine the degree of discipline, if any, to be imposed on Respondent Greenfield, Complainant alleges that on or about May 18, 2009, in San Diego County Superior Court, Case No. CN257972, Respondent was convicted of violating Penal Code section 415, subdivision (2), disturbing the peace, a misdemeanor. As a result of his conviction, Respondent was sentenced to three years summary probation and ordered to pay a fine.

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 90486, issued to Daniel Moreno;

2. Ordering Daniel Moreno 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: 9/19/13

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

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