

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 CHRISTINE J. LEE  
Deputy Attorney General  
4 State Bar No. 282502  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2539  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5560

11 **ENRIQUE MORENO**  
12 12996 Fern Ave.  
13 Chino, CA 91710

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
**104746**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 104746 to Enrique Moreno (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on December 31, 2017, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4011 of the Code provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and  
3 Professions Code, Sec 4000 et esq.)] and the Uniform Controlled Substances Act (Division 10  
4 commencing with Section 11000) of the Health and Safety Code)."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
6 revoke a license issued by the Board.

7 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or  
8 suspension of a board-issued license by operation of law or by order or decision of the board or a  
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license  
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
12 suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 7. Section 490 of the Code states, in pertinent part:

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

19 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
20 discipline a licensee for conviction of a crime that is independent of the authority granted under  
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
22 of the business or profession for which the licensee's license was issued.

23 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
24 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
25 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
26 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
27 made suspending the imposition of sentence, irrespective of a subsequent order under the  
28 provisions of Section 1203.4 of the Penal Code."

1 8. Section 493 of the Code states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a  
3 board within the department pursuant to law to deny an application for a license or to  
4 suspend or revoke a license or otherwise take disciplinary action against a person who  
5 holds a license, upon the ground that the applicant or the licensee has been convicted  
6 of a crime substantially related to the qualifications, functions, and duties of the  
7 licensee in question, the record of conviction of the crime shall be conclusive  
8 evidence of the fact that the conviction occurred, but only of that fact, and the board  
9 may inquire into the circumstances surrounding the commission of the crime in order  
10 to fix the degree of discipline or to determine if the conviction is substantially related  
11 to the qualifications, functions, and duties of the licensee in question."

12 As used in this section, "license" includes "certificate," "permit," "authority," and  
13 "registration."

14 9. Section 4301 of the Code states, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of unprofessional  
16 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

17 Unprofessional conduct shall include, but is not limited to, any of the following:

18 . . . .

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

22 . . . .

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
26 substances or of a violation of the statutes of this state regulating controlled substances or  
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order  
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
6 of this provision. The board may take action when the time for appeal has elapsed, or the  
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
11 indictment.

12 . . . .

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

17 10. Health and Safety Code section 11173 subdivision (a) states: "No person shall obtain  
18 or attempt to obtain controlled substances, or procure or attempt to procure the administration of  
19 or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
20 (2) by the concealment of a material fact."

21 **REGULATORY PROVISION**

22 11. California Code of Regulations, title 16, section 1770, states:

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

1 **DANGEROUS DRUGS**

2 12. Norco, Vicodin, Vicodin ES, Lortab, Lorcet are among the brand names for  
3 compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III  
4 controlled substance as designated by Health and Safety Code section 11056(e)(4) and  
5 dangerous drug as designated by Business and Professions Code section 4022. The varying  
6 compounds are also known generically as Hydrocodone with APAP. These are all narcotic  
7 drugs. Products like these that contain hydrocodone with non-controlled substances are also  
8 called hydrocodone combination products. Effective October 6, 2014, hydrocodone combination  
9 products were switched at the federal level from Schedule III (21 C.F.R. 1308.13 (e)(1)(iii) and  
10 (iv) to Schedule II (21 C.F.R. 1308.12 (b)(1). This includes Hydrocodone with APAP drugs.  
11 Hydrocodone-Acetaminophen otherwise known as Norco is a Schedule II controlled substance as  
12 designated by Health and Safety Code section 11055(b)(1)(i) and is categorized as a dangerous  
13 drug pursuant to section 4022 of the Code.

14 **COST RECOVERY**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially-Related Crime)**

21 14. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
22 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section  
23 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime  
24 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

25 a. On or about June 17, 2015, after pleading guilty, Respondent was convicted of one  
26 felony count of violating Health and Safety Code section 11173(a) [obtain controlled substance  
27 by fraud], in the criminal proceeding entitled *The People of the State of California v. Enrique*  
28

1 *Moreno* (Super. Ct. Riverside County, 2015, No. RIF500098). The court sentenced Respondent  
2 to serve 120 days in jail, placed him on probation for a period of 36 months, and ordered him to  
3 pay fines, fees, and restitution.

4 b. The circumstances surrounding the conviction are that in December 2012 the  
5 Respondent falsely refilled Norco prescriptions for his daughter. Another pharmacy employee  
6 contacted the doctor's office to verify the prescriptions and discovered the prescription refills  
7 were never approved.

### 8 SECOND CAUSE FOR DISCIPLINE

#### 9 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

10 15. Respondent is subject to disciplinary action under sections 4300 and 4301,  
11 subdivision (f), on the grounds of unprofessional conduct as Respondent committed an act  
12 involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was  
13 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or  
14 misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set  
15 forth above in paragraph 14 as though set forth fully.

### 16 THIRD CAUSE FOR DISCIPLINE

#### 17 (Violation of Pharmacy Act)

18 16. Respondent is subject to disciplinary action under section 4301, subdivision (o), on  
19 the grounds of unprofessional conduct, in that Respondent was convicted of a crime and  
20 committed an act that was in violation of the Pharmacy Act. Complainant refers to, and by this  
21 reference incorporates, the allegations set forth above in paragraphs 14 through 15, inclusive, as  
22 though set forth fully.

### 23 PRAYER

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 104746,  
27 issued to Enrique Moreno;

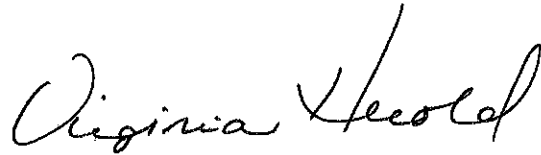
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1           2.     Ordering Enrique Moreno to pay the Board of Pharmacy the reasonable costs of the  
2 investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3; and,

4           3.     Taking such other and further action as deemed necessary and proper.  
5

6  
7  
8 DATED: \_\_\_\_\_

3/18/16



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

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