BILL LOCKYER, Attorney General
of the State of California
LORETTA A. NICKERSON, State Bar No. 149294
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2107
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: MICHAEL CLEMENTE MORALES 1742 Bramblewood Street Chula Vista, CA 91913-1566 Pharmacist License No. RPH 35319 Respondent.	Case No. 2860 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Patricia Harris, is the Executive Officer of the California Board of Pharmacy (Complainant). She brought this Accusation solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Loretta A. Nickerson, Deputy Attorney General.

2. MICHAEL CLEMENTE MORALES (Respondent) is represented in this proceeding by attorney John Murphy, whose address is 625 Broadway, Suite 1400 San Diego, CA 92101, (619) 980-2114.

3. On or about March 11, 1980, the Board of Pharmacy issued Pharmacist License Number RPH 35319 to MICHAEL CLEMENTE MORALES (Respondent). Said license will expire on October 31, 2005, if not renewed.

JURISDICTION

4. Accusation No. 2860 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 20, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2860 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2860. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2860, agrees that cause exists for discipline and hereby surrenders his Pharmacist License Number RPH 35319 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to order accepting the surrender of his Pharmacist License without further process.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License Number RPH 35319, issued to Respondent MICHAEL CLEMENTE MORALES is surrendered and accepted by the Board.

12. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

13. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

14. Respondent shall cause to be delivered to the Board both his License wall and pocket license certificate on or before the effective date of the Decision and Order.

15. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2860 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

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16. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other heath care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2860 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

17. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $5,500.00 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, John Murphy. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 1 Nov 05.

Michael Clemente Morales
MICHAEL CLEMENTE MORALES (Respondent)
Respondent

I have read and fully discussed with Respondent MICHAEL CLEMENTE MORALES the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 11-25-05.

JOHN MURPHY
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board.

DATED: 11/30/05.

BILL LOCKYER, Attorney General
of the State of California

LORETTA A. NICKERSON
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700363
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHAEL CLEMENTE MORALES 1742 Bramblewood Street Chula Vista, CA 91913-1566 Pharmacist License No. RPH 35319 Respondent.	Case No. 2860 **DECISION AND ORDER**

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board, as its Decision in this matter.

This Decision shall become effective on February 17, 2006.

It is so ORDERED January 18, 2006.

DATED: January 18, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2860

BILL LOCKYER, Attorney General
of the State of California
LORETTA A. NICKERSON, State Bar No. 149294
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHAEL CLEMENTE MORALES 1742 Bramblewood Street Chula Vista, CA 91913-1566 Pharmacist License No. RPH 35319 Respondent.	Case No. 2860 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia Harris, Executive Officer of the California Board of Pharmacy (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 March 21, 1980, the Board of Pharmacy issued Pharmacist License Number RPH 35319 to MICHAEL CLEMENTE MORALES (Respondent). Said license will expire on October 31, 2005, if not renewed.

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.

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

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"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(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 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:

". . .

"(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.

". . .

"(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. . . . [T]he 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.

"...

"(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.

"..."

6. 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.

7. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 477 of the Code states:

As used in this division:

"(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

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"(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code."

9. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

10. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

11. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who

holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

12. 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."

FACTS

13. On or about April 10 2000, in a criminal proceeding entitled *People vs. Michael Clemente Morales* in San Diego Superior Court - Kearny Mesa Branch, Case Number M 797915, Respondent was convicted for violating Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol), a misdemeanor. Respondent's Preliminary Alcohol Screening test at the scene of his arrest registered .168 percent and .169 percent of alcohol in his blood, over twice the legal limit. Respondent was ordered to the following: 5 years probation; 180 days custody in County Jail; fines; and, attend and successfully complete first conviction and MADD program; and, his driver's license was restricted for 90 days.

14. On or about May 31, 2001, the Board of Pharmacy sent Respondent a letter advising him that the Board was aware of the conviction and that future acts of unprofessional conduct may result in disciplinary action against his license.

15. On or about March 1, 2002, in a criminal proceeding entitled *People vs. Michael Clemente Morales* in San Diego Superior Court - Kearny Mesa Branch, Case Number M 852003, Respondent was convicted for violating Vehicle Code section 23152(b) (Driving While having 0.08 Percent of Alcohol or More in Blood), a misdemeanor, and was ordered to the following: 5 years probation; custody of County Jail or Public Service Work Program; fines; attend and complete Multiple Conviction Program (MCP) for education; and, participate in any treatment or rehabilitation that may be recommended by the MCP provider.

16. The Board was not aware of Respondent's second conviction in March 2002, for Driving Under the influence of Alcohol, that is described in paragraph 15 above.

17. On or about April 1, 2004, in a criminal proceeding entitled *People vs. Michael Clemente Morales* in San Diego Superior Court, Case Number M893925, Respondent was convicted for violating Vehicle Code section 23152 (b) (Driving While Having a Measurable Blood Alcohol) and Vehicle Code section 23546 (Special Allegation of 2 Prior Convictions for Driving Under the Influence of Alcohol Within 7 Years), a misdemeanor, and was ordered to the following: 5 years probation; abstain from alcohol; 120 days custody in County Jail or participation in Work Furlough Program; $2,000 fine; attend and complete Multiple Conviction Program (MCP) for education; and, participation in any treatment or rehabilitation that may be recommended by the MCP provider. Respondent was "declared a habitual offender", Respondent's driving privileges were revoked for three years, and his vehicle was impounded for 90 days. The record of the criminal proceeding is incorporated herein as if fully set forth.

FIRST CAUSE FOR DISCIPLINE
(UNPROFESSIONAL CONDUCT -
MULTIPLE CONVICTIONS OF CRIME INVOLVING USE OF ALCOHOL)

18. Respondent is subject to disciplinary action under Sections 4301(k) 4301(l), and 4301 (o), in that Respondent has, on three separate occasions within a four-year period, been convicted of crimes involving use of alcohol, as described in paragraphs 13, 15, and 17, above.

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SECOND CAUSE FOR DISCIPLINE
(UNPROFESSIONAL CONDUCT - USE OF ALCOHOL IN A MANNER DANGEROUS TO SELF AND PUBLIC

19. Respondent is subject to disciplinary action under Sections 4301, 4301(f) 4301(h), and 4301 (o), in that Respondent has, on three separate occasions within a four-year period, done the following: used alcohol in a manner injurious to himself and public; driven a motor vehicle while under the influence of alcohol, in violation of the Vehicle Code; been arrested for driving under the influence of alcohol; and, been convicted of crimes involving dangerous use of alcohol, as described in paragraphs 13, 15, and 17, 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:

A. Revoking or suspending Pharmacist License Number RPH 35319, issued to MICHAEL CLEMENTE MORALES.

B. Ordering MICHAEL CLEMENTE MORALES 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;

C. Taking such other and further action as deemed necessary and proper.

DATED: 5/13/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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