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9
10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12
13

14 In the Matter of the Accusation Against:

Case No. 2860

15 MICHAEL CLEMENTE MORALES
1742 Bramblewood Street
16 Chula Vista, CA 91913-1566

STIPULATED
SURRENDER OF LICENSE
AND ORDER

17 Pharmacist License No. RPH 35319

Respondent.

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

21 PARTIES

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

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

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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

1 BILL LOCKYER, Attorney General
of the State of California
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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
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14 In the Matter of the Accusation Against:

Case No. 2860

15 MICHAEL CLEMENTE MORALES
1742 Bramblewood Street
16 Chula Vista, CA 91913-1566

A C C U S A T I O N

17 Pharmacist License No. RPH 35319

18 Respondent.
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21 Complainant alleges:

22 PARTIES

23 1. Patricia Harris, Executive Officer of the California Board of Pharmacy
24 (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of
25 the Board of Pharmacy, Department of Consumer Affairs.

26 2. On or about March 21, 1980, the Board of Pharmacy issued Pharmacist
27 License Number RPH 35319 to MICHAEL CLEMENTE MORALES (Respondent). Said
28 license will expire on October 31, 2005, if not renewed.

JURISDICTION

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

5 4. Section 4300 of the Code states:

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

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

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

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

13 “(4) Revoking his or her license.

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

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

21 “(1) Medical or psychiatric evaluation.

22 “(2) Continuing medical or psychiatric treatment.

23 “(3) Restriction of type or circumstances of practice.

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

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

26 “(6) Random fluid testing for alcohol or drugs.

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

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

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

10 5. Section 4301 of the Code states:

11 “The board shall take action against any holder of a license who is guilty of
12 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
13 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
14 following:

15 “... ”

16 “(h) The administering to oneself, of any controlled substance, or the use of any
17 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
18 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
19 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
20 the public the practice authorized by the license.

21 “... ”

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

25 “(l) The conviction of a crime substantially related to the qualifications, functions,
26 and duties of a licensee under this chapter. . . . [T]he record of conviction shall be conclusive
27 evidence only of the fact that the conviction occurred. The board may inquire into the
28 circumstances surrounding the commission of the crime, in order to fix the degree of discipline

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

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

3 9. Section 490 of the Code states:

4 "A board may suspend or revoke a license on the ground that the licensee has
5 been convicted of a crime, if the crime is substantially related to the qualifications,
6 functions, or duties of the business or profession for which the license was issued. A
7 conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action which a board is permitted to
9 take following the establishment of a conviction may be taken when the time for appeal
10 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
11 granting probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under the provisions of Section 1203.4 of the Penal Code."

13 10. Section 492 of the Code states:

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

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

25 11. Section 493 of the Code states:

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

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

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

10 12. California Code of Regulations, title 16, section 1770, states:

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

17 **FACTS**

18 13. On or about April 10 2000, in a criminal proceeding entitled
19 *People vs. Michael Clemente Morales* in San Diego Superior Court - Kearny Mesa Branch,
20 Case Number M 797915, Respondent was convicted for violating Vehicle Code section 23152(a)
21 (Driving Under the Influence of Alcohol), a misdemeanor. Respondent's Preliminary Alcohol
22 Screening test at the scene of his arrest registered .168 percent and .169 percent of alcohol in his
23 blood, over twice the legal limit. Respondent was ordered to the following: 5 years probation;
24 180 days custody in County Jail; fines; and, attend and successfully complete first conviction and
25 MADD program; and, his driver's license was restricted for 90 days.

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

