

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

In the Matter of the Accusation Against:

Case No. 3743

RICHARD MAX BREEN
67888 Marilyn Circle, #3
Cathedral City, CA 92234

Pharmacy Technician Registration No. TCH
87605

Respondent.

DECISION AND ORDER

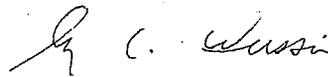
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 28, 2011.

It is so ORDERED on February 25, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LORETTA A. WEST
Deputy Attorney General
4 State Bar No. 149294
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2107
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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12 **RICHARD MAX BREEN**
13 **67888 Marilyn Circle, #3**
14 **Cathedral City, CA 92234**

**STIPULATED REVOCATION
AND DISCIPLINARY ORDER**

15 **Pharmacy Technician Registration No. TCH 87605**

16 Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Loretta A. West, Deputy Attorney
24 General.

25 2. Respondent Richard Max Breen is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 08-06-2010 
RICHARD MAX BREEN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 8/10/10

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

SD2010701237

Exhibit A

Accusation No. 3743

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LORETTA A. WEST
Deputy Attorney General
4 State Bar No. 149294
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2107
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:
12
13 **RICHARD BREEN**
67888 Marilyn Circle, #3
14 Cathedral City, CA 92234
15 **Pharmacy Technician Registration**
No. TCH 87605
16 Respondent.

Case No. 3743
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
22 2. On or about December 3, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 87605 to Richard Breen (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on August 31, 2010, unless renewed.
26 3. On July 8, 2010, the Board filed a Petition for Interim Suspension Order with the
27 Office of Administrative Hearings, requesting the immediate suspension of Respondent's
28

1 Pharmacy Technician Registration pending further Order from the Board or the Office of
2 Administrative Hearings. On July 13, 2010, the Office of Administrative Hearings issued an
3 Interim Suspension Order, and suspended Respondent's Pharmacy Technician Registration,
4 effective July 13, 2010, until further Order by the Office of Administrative Hearings or the Board.

5 JURISDICTION

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

9 5. Section 4300 of the Code states:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

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

18 (4) Revoking his or her license.

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

21 6. Section 4202, subdivision (d), provides that the Board may suspend or
22 revoke any pharmacy technician registration issued on any ground specified in Section
23 4301.

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

STATUTORY PROVISIONS

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2 8. Section 482 of the Code states:

3 Each board under the provisions of this code shall develop criteria to
4 evaluate the rehabilitation of a person when:

5 (a) Considering the denial of a license by the board under Section 480; or

6 (b) Considering suspension or revocation of a license under Section 490.

7 Each board shall take into account all competent evidence of
8 rehabilitation furnished by the applicant or licensee.

9 9. Section 492 of the Code states:

10 Notwithstanding any other provision of law, successful completion of any
11 diversion program under the Penal Code, or successful completion of an
12 alcohol and drug assessment program under Article 5 (commencing with
13 Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not
14 prohibit any agency established under Division 2 (commencing with Section
15 500) 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.

16 This section shall not be construed to apply to any drug diversion
17 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.

18 10. Section 4059 (a) of the Code states:

19 A person may not furnish any dangerous drug, except upon the
20 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A
21 person may not furnish any dangerous device, except upon the prescription of a
physician, dentist, podiatrist, optometrist, or veterinarian.

22 11. Section 4060 of the Code states:

23 No person shall possess any controlled substance, except that furnished to
24 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
25 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
26 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
27 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
28 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

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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.

12. 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:

....
(j) The violation of any of the statutes of this state or of the United States regulating controlled substances.

....
(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.

13. Health and Safety Code section 11377(a) states:

Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (1), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in county jail for a period of not more than one year or in the state prison.

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14. Health and Safety Code section 11379.2 states:

Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale or sells any controlled substance specified in subdivision (g) of Section 11056 [Ketamine] shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

REGULATIONS

15. California Code of Regulations, title 16, section 1769, subdivision b, states:

When considering the suspension or revocation of a facility or personal license on the ground that the licensee or the registrant has been convicted of a crime, the board in evaluating the rehabilitation of such person and her present eligibility for a license will consider the following:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) Time that has elapsed since the commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

16. 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.

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1 COST RECOVERY

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

6 CONTROLLED SUBSTANCES

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8 18. Dimethyltryptamine (DMT) is a Schedule I controlled substance, pursuant to Health
9 and Safety Code section 11054 (d) (10). DMT is a psychedelic hallucinogen.

10 19. Ketamine is a Schedule III controlled substance, pursuant to Health and Safety Code
11 section 11056 (g). Ketamine is commonly referred to as "Special K" in the illicit drug market.

12 20. Methlenedioxymethamphetamine (MDMA), also known as "Ecstasy" in the illicit
13 drug market, is a Schedule III controlled substance, pursuant to Health and Safety Code section
14 11056 (b).

15 FIRST CAUSE FOR DISCIPLINE

16 (Unlawful Possession of Controlled Substance, on July 3, 2009)

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18 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
19 in that he unlawfully possessed the controlled substance, Methlenedioxymethamphetamine
20 (MDMA), aka Ecstasy, in violation of Health and Safety Code section 11377 (a). The
21 circumstances are as follows:

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23 22. On or about July 3, 2009, at approximately 1:10 a.m., Respondent walked down the
24 street with friends who were under 18 years of age. A Desert Hot Springs Police Officer noticed
25 them and stopped to investigate a violation of curfew for minors. The officer searched
26 Respondent's back-pack and found a dark gray baggie containing six (6) blue pills. The police
27 officer determined that the pills were Methlenedioxymethamphetamine (MDMA), also known as
28

1 Ecstasy, based upon his knowledge, training, and experience. One of the pills tested positive for
2 Methlenedioxymethamphetaminic when the officer used a MDMA reagent 923 test kit on the pill.
3 Respondent admitted to the officer that he had self-administered Ecstasy approximately a week
4 earlier. Respondent was arrested for unlawful possession of the controlled substance and
5 transported to Riverside County Banning Jail.
6

7 23. On or about November 10, 2009, in a criminal proceeding entitled *People v. Richard*
8 *Max Breen*, in California Superior Court, Riverside County, Indio Division West, Case Number
9 INF066061, Respondent pled guilty to violation of Health and Safety Code section 11377 (a)
10 (unlawful possession of a controlled substance), a misdemeanor.
11

12 24. The Court ordered entry of judgment deferred, pursuant to Penal Code section 1000,
13 and Respondent was ordered to enter, comply with terms and conditions of, and complete a drug
14 rehabilitation program commonly referred to as Diversion.

15 25. On February 22, 2010, the court terminated Respondent from Diversion and the
16 deferred entry of judgment was vacated, due to Respondent's violation of Diversion rules in that a
17 second drug related criminal complaint against Respondent was filed on February 18, 2010.
18 Respondent did not appear in court and the court also ordered a bench warrant for Respondent's
19 arrest.

20 26. On June 3, 2010, Respondent appeared in Court and admitted violation of his
21 Diversion terms and the Court ordered Diversion reinstated for a period of 18 months.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Unlawful Possession of Controlled Substance for Sale
24 on October 6, 2010)

25 27. Respondent is subject to disciplinary action under Code section 4301,
26 subdivision (j), in that he unlawfully possessed large quantities of the controlled substance,
27

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1 Ketamine, for sale, in violation Health and Safety Code section 11379.2 (possession of a
2 controlled substance for sale). The circumstances are as follows:

3 28. On or about October 6, 2010, Respondent's roommate was arrested in connection
4 with unlawful possession of drugs and he consented to a search of his home which was shared
5 with Respondent. Respondent consented to a search of his bedroom. The searching police officer
6 initially found a cigar box filled with 17 separate baggies containing approximately 1.8 grams of
7 the controlled substance Ketamine. The officer noticed that Respondent's bookshelf was not
8 level. Inside the shelf, the police officer found 59 baggies containing approximately 1.26 grams
9 of Ketamine, and a larger baggie containing approximately 27.67 grams of Ketamine. The police
10 officer also found a baggie containing approximately .04 grams of the controlled substance,
11 dimethyltryptamine, also known as DMT.
12

13 29. Respondent admitted to the arresting officer that he had recently bought three
14 thousand dollars worth of Ketamine and he was hoping to sell it to make a profit. Respondent
15 was arrested and transported to Fontana Police Department for booking. Respondent was then
16 released on his own recognizance.
17

18 30. As a result of the arrest, on February 18, 2010, a criminal complaint was filed against
19 Respondent in the Superior Court, Los Angeles County, West Covina, case entitled *People v.*
20 *Richard Max Breen*, Case No. KA089688, and alleged one felony count of violation of Health
21 and Safety Code section 11379.2 (possession for sale or sale of Ketamine). On March 18, 2010,
22 Respondent failed to appear for his criminal arraignment. The court ordered an arrest warrant
23 issued and set bail at \$20,000.00. Respondent has not yet been arraigned because he has not yet
24 appeared in court. The warrant remains outstanding.
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1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Possession of Controlled Substances)

3 31. Respondent is subject to disciplinary action under Code sections 4301,
4 subdivision (o), in that he unlawfully possessed the controlled substances,
5 Methlenedioxymethamphetamine, Ketamine, and/or dimethyltryptamine, on two separate
6 occasions, in violation of Business and Professions Code section 4060, as described above in
7 paragraphs 22, 28, and 29, which are incorporated herein by reference.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Unlawful Self Administration of Controlled Substance)

10 32. Respondent is subject to disciplinary action under Code sections 4301,
11 subdivisions (o), in that he unlawfully self-administered the controlled substance,
12 Methlenedioxymethamphetamine (aka "Ecstasy"), in or about June 2009, in violation of Business
13 and Professions Code section 4059, as described above in paragraph 22, which is incorporated
14 herein by reference.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 87605,
19 issued to Richard Max Breen
- 20 2. Ordering Richard Max Breen to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 7/20/2010

25 *Virginia Herold* Deputy Attorney General
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2010701234