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

In the Matter of the Accusation Against:	Case No. 4134
ROBERTO MORENO **2789 E. Verde Avenue** **Anaheim, CA 92806** **Pharmacy Technician Registration** **No. TCH 96401** Respondent.	**DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 9, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4134 against Roberto Moreno (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 22, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 96401 to Respondent. The Pharmacy Technician Registration expired on November 30, 2011, and has not been renewed. 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.

3. On or about November 18, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4134, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported and maintained with the Board, which was and is:

2789 E. Verde Avenue
Anaheim, CA 92806

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about November 25, 2011, Respondent signed the Domestic Return Receipt acknowledging receipt of the Accusation served by certified mail.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4134.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4134, finds that the charges and allegations in Accusation No. 4134, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $852.50 as of December 14, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Roberto Moreno has subjected his Pharmacy Technician Registration No. TCH 96401 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case:

a. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that on or about August 9, 2010, Respondent illegally administered to himself marijuana, a controlled substance.

b. Respondent subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in on or about February 4, 2011, in a criminal proceeding entitled *People of the State of California v. Robert Moreno,* in Orange County Superior Court, case number 11NF0328, Respondent was convicted on his plea of guilty for violating two counts of Health and Safety Code section 11352, subdivision (a), sale or transportation of a controlled substance (Vicodin), a felony; Health and Safety Code section 11375, subdivision (b)(1), possession for sale of designated controlled substance (Valium), a felony; and Business and Professions Code section 4060, possession of a controlled substance without a prescription, a misdemeanor. Said convictions are substantially related to the qualifications, duties, and functions of a pharmacy technician.

c. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that on or about January 25, 2011, Respondent was found in possession of controlled substances and dangerous drugs stolen from his employer using dishonesty, fraud, and deceit.

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d. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that on or about on or about and between December 9, 2010, and January 25, 2011, Respondent knowingly and willfully violated Health and Safety Code section 11352, subdivision (a), Health and Safety Code section 11375, subdivision (b)(1), and Business and Professions Code sections 4059 and 4060 regulating controlled substances and dangerous drugs.

e. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that Respondent acts violated Title 21 U.S.C. section 843, subdivision (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.).

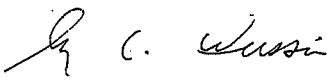
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 96401, heretofore issued to Respondent Roberto Moreno, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 14, 2012.

It is so ORDERED February 13, 2012.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID: SD2011800900

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **ROBERTO MORENO** **2789 E. Verde Avenue** **Anaheim, CA 92806** **Pharmacy Technician Registration** **No. TCH 96401** Respondent.	Case No. 4134 **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 March 22, 2010, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 96401 to Roberto 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 November 30, 2011, 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 (Code) unless otherwise indicated.

4. 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.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
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> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. 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.

9. 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."

10. 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.

. . . .

(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.

. . . .

(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.

. . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this

state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 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 or by any other state or federal regulatory agency.

. . . .

11. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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13. 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.

14. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

. . . .

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

. . . .

REGULATORY PROVISIONS

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

. . . .

(b) When considering the suspension or revocation of a facility or a 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 his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since 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.

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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.

COSTS

17. 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.

DRUGS

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

19. Vicodin, sold generically as hydrocodone-APAP, is a Schedule III controlled substance as designated by Health and Safety Code Section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

20. Valium, sold generically as diazepam, is a Schedule IV controlled substance as designated by Health and Safety Code Section 11057, subdivision (d)(9), and is a dangerous drug pursuant to Business and Professions Code section 4022.

21. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16), and is a dangerous drug pursuant to Business and Professions Code section 4022.

22. Zolpidem tartrate, sold under the brand name Ambien, is a Schedule IV controlled substance as designated by Health and Safety Code section 11507, subdivision (d)(32), and is a dangerous drug pursuant to Business & Professions Code section 4022.

23. Carisoprodol, sold under the brand name Soma, is a dangerous drug pursuant to Business and Professions Code section 4022.

24. Clonazepam, sold under the brand name Klonopin, is a Schedule IV controlled substance under California Health and Safety Code section 11057, subdivision (d)(7), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Illegal Use of a Controlled Substance)

25. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that on or about August 9, 2010, Respondent illegally administered to himself marijuana, a controlled substance. The circumstances are as follows:

a. On or about the evening of August 9, 2010, the Anaheim Police Department was dispatched to investigate three subjects entering a vacant house for possible drug activity. Upon arrival, the patrol officer observed Respondent and two companions sitting at a picnic table in the patio of the vacant house. Respondent admitted to the officer that the trio had purchased $20 worth of marijuana from a man they knew as "Termite," that they started smoking marijuana two months earlier, and that they had been smoking marijuana prior to the officer's arrival. Respondent and his companions were cited for possession of 1 gram of marijuana.

b. On or about September 23, 2010, in a criminal proceeding entitled *People of the State of California v. Roberto Moreno,* Orange County Superior Court, case number AN1466578, Respondent entered a plea of guilty to violating Health and Safety Code section 11357, subdivision (b), possession of 28.5 grams or less of marijuana.

c. As a result of the guilty plea, the court deferred entry of judgment and Respondent was ordered to enroll in a 10-hour drug program pursuant to Penal Code section 1000. A hearing to dismiss the case is set for October 9, 2012.

SECOND CAUSE FOR DISCIPLINE

(February 4, 2011 Criminal Conviction for Controlled Substance Sales, Possession for Sale, & Possession of a Controlled Substance Without a Prescription)

26. Respondent subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of felonies that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about February 4, 2011, in a criminal proceeding entitled *People of the State of California v. Robert Moreno,* in Orange County Superior Court, case number 11NF0328, Respondent was convicted on his plea of guilty for violating two counts of Health and Safety Code section 11352, subdivision (a), sale or transportation of a controlled substance (Vicodin), a felony; Health and Safety Code section 11375, subdivision (b)(1), possession for sale of designated controlled substance (Valium), a felony; and Business and Professions Code section 4060, possession of a controlled substance without a prescription, a misdemeanor. Four additional counts were dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about February 4, 2011, Respondent was sentenced to 180 days in the Orange County Jail, with credit for three days, and ordered to serve three years formal probation. Respondent was required to register as a drug offender, submit to DNA sampling, and waive his Fourth Amendment rights, plus additional terms of felony probation. Respondent was ordered to pay fines, fees, and restitution in the amount of $645, plus the cost of formal probation.

c. The circumstances that led to the conviction are that on or about October 8, 2010, the Anaheim Police Department received an anonymous complaint on their 24-hour narcotic hotline that Respondent and a 40-year-old female were selling methamphetamine out of an Anaheim apartment. Respondent's cell phone number was obtained through a background check. Several text messages were exchanged between an investigator and Respondent between December 1, 2010 and December 3, 2010. The investigator was able to confirm that Respondent was involved in selling narcotics.

d. On December 7, 2010, in an exchange of text messages, Respondent stated to the investigator "I just push prescription meds." On December 8, 2010, the investigator arranged to purchase three tablets of Vicodin for $15. On December 9, 2010, the investigator had two undercover officers arrange to meet with Respondent in a parking lot. Respondent met with the officers and asked to sit in the backseat of their vehicle where they made a transaction of $15 for 13 tablets of Vicodin. On December 17, 2010, another purchase was arranged at a gas station where Respondent sold 15 tablets of Vicodin to the undercover officer for $20. On January 25,

2011, Respondent met with the undercover officer in a bank parking lot. While sitting inside Respondent's vehicle, the undercover officer purchased 14 tablets of Vicodin for $20. As the undercover officer exited Respondent's vehicle, he gave a pre-arranged signal to nearby investigators to arrest Respondent. A search of Respondent's vehicle revealed that in the front passenger compartment near the gear shift was a small pile of pills of various shapes and colors identified as 19 tablets of Vicodin, 28 tablets of lorazepam (Ativan), 31 tablets of zolpidem (Ambien), and 11 tablets of carisoprodol (Soma). Lying on the front passenger seat was a pill bottle labeled "Austin Drugs," Respondent's employer, containing 84 tablets of Vicodin. On the driver's side door, the investigators located a tablet of oxybutynin chloride (Ditropan) and a tablet of hydralazine hydrochloride (Apresoline), two non-scheduled prescription medications. In the trunk, investigators found a pill bottle labeled "Austin Drugs" containing 49 tablets of Valium, and one tablet of clonazepam (Klonopin). Respondent was arrested. Austin Drugs refused to file a complaint for burglary.

e. On or about February 10, 2011, Austin Drugs filed a "Report of Theft or Loss of Controlled Substances" with the Board stating that 40 tablets of hydrocodone-APAP 5-500 were lost through employee pilferage.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of Acts Involving Dishonesty, Fraud & Deceit)

27. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that on or about January 25, 2011, Respondent was found in possession of controlled substances and dangerous drugs stolen from his employer using dishonesty, fraud, and deceit as detailed in paragraph 26, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of California Statutes Regulating Controlled Substances & Dangerous Drugs)

28. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that on or about on or about and between December 9, 2010, and January 25, 2011, Respondent knowingly and willfully violated Health and Safety Code section 11352, subdivision

(a), Health and Safety Code section 11375, subdivision (b)(1), and Business and Professions Code sections 4059 and 4060 regulating controlled substances and dangerous drugs, as detailed in paragraph 26, above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violating Federal & State Laws & Regulations Governing Pharmacy)

29. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that Respondent acts violated Title 21 U.S.C. section 843, subdivision (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in paragraph 25, 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:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 96401, issued to Roberto Moreno;

2. Ordering Roberto 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;

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

DATED: 11/9/11

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

SD2011800900