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

In the Matter of the Accusation Against:

Case No. 4610

Daniel Moreno

1510 South Melrose Drive, Apt 17 Vista, CA 92054

Pharmacy Technician Registration No. TCH 90486

OAH No. 2013100758

Respondent.

DECISION AND ORDER

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

This decision shall become effective on May 19, 2014.

It is so ORDERED on May 14, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

1	KAMALA D. HARRIS		
2	Attorney General of California JAMES M. LEDAKIS		
3	Supervising Deputy Attorney General ADRIAN R. CONTRERAS		
4	Deputy Attorney General State Bar No. 267200		
5	110 West "A" Street, Suite 1100 San Diego, CA 92101		
6	P.O. Box 85266		
	San Diego, CA 92186-5266 Telephone: (619) 645-2634		
7	Facsimile: (619) 645-2061 E-mail: Adrian.Contreras@doj.ca.gov		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 4610	
13	DANIEL MORENO 1510 South Molyago Drive Anaytmont 17	OAH No. 2013100758	
14	1510 South Melrose Drive, Apartment 17 Vista, California 92054	STIPULATED SETTLEMENT AND	
15	Pharmacy Technician Registration No. TCH 90486	DISCIPLINARY ORDER FOR PUBLIC REPROVAL	
16	Respondent.	[Bus. & Prof. Code § 495]	
17	Respondent.		
18	In the interest of a prompt and speedy settlement of this matter, consistent with the public		
19	interest and the responsibilities of the Board of Pharmacy of the Department of Consumer Affairs		
20	the parties hereby agree to the following Stipulated Settlement and Disciplinary Order for Public		
21	Reproval which will be submitted to the Board for approval and adoption as the final disposition		
22	of the Accusation		
23	PARTIES		
24	VIRGINIA HEROLD (Complainant) is the Executive Officer of the Board of		
25	Pharmacy. She brought this action solely in her official capacity and is represented in this matter		
26	by Kamala D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deput		
27	Attorney General.		
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- 2. Respondent Daniel Moreno (Respondent) is represented in this proceeding by attorney Cherie L. Brenner, whose address is: 5020 Campus Drive, Newport Beach, CA 92660.
- 3. On or about May 6, 2009, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 90486 to Daniel Moreno (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4610 and will expire on July 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 4610 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 1, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 4610 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. 4610. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.
- 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.

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CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4610.
- 9. Respondent agrees that his Pharmacy Technician Registration is subject to discipline and he agrees to be bound by the Disciplinary Order below.

CONTINGENCY

- 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reproval shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reproval, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Settlement and Disciplinary Order for Public Reproval is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order for Public Reproval may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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<u>ACCEPTANCE</u>

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with my attorney, Cherie L. Brenner. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

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SIGNATURE VIA ATTACHED FACSIMLE TRANSMISSION

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PARTEL MICKENU

I have read and fully discussed with Respondent Daniel Moreno the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public

Reproval. I approve its to an and content.

4/14/14

CHERIE L. BRENNER, ESO. Attorney for Respondent

ENDORSEMENT

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

Dated:

DATED:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

ADRIAN R. CONTRERAS Deputy Attorney General Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with my attorney, Cherie L. Brenner. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

DANIEL MORENO
Respondent

I have read and fully discussed with Respondent Daniel Moreno the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reproval. I approve its form and content.

DATED:

CHERIE L. BRENNER, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/15/14

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS Supervising Deputy Attorney General

ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4610

1	VAMALA D. HADDIO		
_	KAMALA D. HARRIS Attorney General of California		
2	JAMES M. LEDAKIS Supervising Deputy Attorney General		
3	ADRIAN R. CONTRERAS Deputy Attorney General		
4	State Bar No. 267200 110 West "A" Street, Suite 1100		
5	San Diego, CA 92101 P.O. Box 85266		
6	San Diego, CA 92186-5266		
7	Telephone: (619) 645-2634 Facsimile: (619) 645-2061		
8	E-mail: Adrian, Contreras@doj.ca.gov Attorneys for Complainant		
. 9	BEFORE THE		
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
11	STATE OF CALIFORNIA		
12	In the Matter of the Accusation Against:	Case No. 4610	
13	DANIEL MORENO	ACCUSATION	
14	1510 South Melrose Drive, Apartment 17 Vista, California 92054		
15	Pharmacy Technician Registration No. TCH 90486		
16	Respondent.		
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.		
22	2. On or about May 6, 2009, the Board of Pharmacy issued Pharmacy Technician		
23	Registration Number TCH 90486 to Daniel Moreno (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 July 31, 2014, unless renewed.		
26	<i>III</i>		
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Accusation

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III

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.

- "(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 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

6. 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.

"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."

7. 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.

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"(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.

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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 or by any other state or federal regulatory agency.

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8. Section 11358 of the Health and Safety Code states:

"Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

9. Section 11359 of the Health and Safety Code states:

"Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

COSTS

10. 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. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DRUGS

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Attempted Violation of Laws Regulating Controlled Substances)

12. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in that Respondent attempted to possess for sale the controlled substance marijuana in violation of Code section 4060 and Health and Safety Code section 11359; and attempted to

 plant, cultivate, harvest, dry, or process marijuana in violation of Health and Safety Code section 11358. The circumstances are as follows:

- 13. On or about October 11, 2011, deputies from the Mendocino County Sheriff's Office assisted local Fish and Game officers with the service of a search warrant for two parcels of property. The search involved a potential illegal diversion of water from the Eel River to water various marijuana gardens on this property.
- 14. The deputies arrived at the property and found six marijuana gardens with about 766 budding marijuana plants. They arrested one man in a wooden trimming and drying structure that had large piles of marijuana trimmings and over fifty pounds of packaged bud marijuana in oven bags. There were also hanging marijuana plants and drying trays with completely trimmed wet marijuana buds in four 35-gallon trash cans. They searched a nearby barn and found wet hanging marijuana plants and a "Twister" trim machine that is commonly used to trim marijuana. The deputies searched several structures in the vicinity and found several more marijuana gardens that contained hundreds of budding marijuana plants. The packaged marijuana alone that the deputies found weighed about 61.2 pounds. The deputies found documents that appeared to be pay/owe sheets.
- 15. Respondent was at the scene and spoke with the deputies. Respondent had arrived four days earlier and said that he planned to make \$25 an hour trimming/processing marijuana at the location. Respondent said that he did not have a medical marijuana recommendation and that he was not a caregiver or member of a collective. Respondent said that someone hired Respondent to work at the location for processing marijuana. He admitted to having knowledge of the marijuana growing operation at this location.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Attempted Act of Moral Turpitude)

16. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (f) and (o) in that Respondent attempted to possess marijuana for sale and attempted to cultivate or process marijuana, acts of moral turpitude. The circumstances are described in paragraphs 12-15, above, and are hereby incorporated as if fully set forth herein.

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MATTER IN AGGRAVATION

17. To determine the degree of discipline, if any, to be imposed on Respondent Greenfield, Complainant alleges that on or about May 18, 2009, in San Diego County Superior Court, Case No. CN257972, Respondent was convicted of violating Penal Code section 415. subdivision (2), disturbing the peace, a misdemeanor. As a result of his conviction, Respondent was sentenced to three years summary probation and ordered to pay a fine.

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:

- Revoking or suspending Pharmacy Technician Registration Number TCH 90486, issued to Daniel Moreno;
- 2. Ordering Daniel 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; and
 - 3. Taking such other and further action as deemed necessary and proper.

Executive Officer

Board of Pharmacy

Department of Consumer Affairs State of California

Complainant

Exhibit B

Letter of Public Reproval in Case No. 4610





May 14, 2014

Daniel Moreno 1510 South Melrose Drive, Apartment 17 Vista, CA 92054

Re:

LETTER OF PUBLIC REPROVAL

In the Matter of the Accusation Against:

Daniel Moreno, Pharmacy Technician Registration No. TCH 90486

Dear Mr. Moreno:

On September 19, 2013, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Pharmacy Technician Registration. The Accusation alleged that you violated Business and Professions Code section 4301, subdivisions (f), (j), and (o), attempted act of moral turpitude and attempted violation of law regulating controlled substances. On October 11, 2011, you spoke to law enforcement officers after they had taken several people into custody at a marijuana growing operation in Mendocino County. You told the officers that you arrived there four days earlier and that you were hired to trim and process the marijuana.

Taking into consideration this happened about two and a half years ago; attempt is an inchoate offense and, thus, no violations of the laws regulating controlled substances were ultimately completed; there is no evidence of recurrence or subsequent violations; you have been licensed for almost five years without prior discipline; there is no evidence that you consume controlled substances illegally; and that there are other mitigating circumstances in this case that support the determination that you are safe to practice as a Pharmacy Technician, the Board has decided that the charges warrant a public reproval.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproval.

Sincerely,

VIRGINIÀ HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs