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

In the Matter of the Accusation Against:
JUAN CARLOS MORALES-ACEVEDO
2368 N Hanover
Fresno, CA 93722
Pharmacy Technician Registration No. TCH
138598

Respondent.

Case No. 5678

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 18, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (“Board”), Department of Consumer Affairs, filed Accusation No. 5678 against Juan Carlos Morales-Acevedo (“Respondent”) before the Board. (Accusation attached as Exhibit A.)
2. On or about March 17, 2014, the Board issued Pharmacy Technician Registration Number TCH 138598 (“registration”) to Respondent. The registration was in full force and effect at all times relevant to the charges brought herein. The license expired on April 30, 2015, and was cancelled on August 2, 2015.
3. On or about May 26, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5678, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 is required to be reported and maintained with the Board. Respondent's address of record was
3 and is: 2368 N Hanover, Fresno, CA 93722.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. No documents were returned by the U.S. Postal Service marked as undeliverable.

8 6. Government Code section 11506(c) states, in pertinent part:

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 5678.

17 8. California Government Code section 11520(a) states, in pertinent part:

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 5678, finds that
27 the charges and allegations in Accusation No. 5678, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$2,327.50 as of June 30, 2016.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Juan Carlos Morales-Acevedo
3 has subjected his Pharmacy Technician License No. TCH 138598 to discipline.

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

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

8 a. Respondent is subject to discipline under Code section 4301(l), on the grounds of
9 unprofessional conduct, in that on or about February 25, 2015, in the case of *People v. Juan*
10 *Acevedo aka Juan Morales*, (Super. Fresno County, 2014, Case No. F14911370), Respondent was
11 convicted by the Court on his plea of guilty of violating Health and Safety Code section 11359
12 (possession of Marijuana for sale), a felony. The circumstances of the crime were that on or
13 about December 26, 2014, following a routine traffic stop, the officer found that Respondent
14 possessed over 218 grams of Marijuana in his vehicle for the purposes of selling it, along with a
15 scale, plastic baggies, cash, and a separate cellular phone for drug transactions. The crime is
16 substantially related to the qualifications, functions or duties of a pharmacy technician.

17 b. Respondent is subject to discipline pursuant to Code section 4301(j), on the grounds
18 of unprofessional conduct, in that while a registered pharmacy technician, Respondent violated
19 statutes regulating controlled substances, as follows:

20 **December 26, 2014**

21 i. Respondent violated Health and Safety Code section 11359, in that Respondent
22 possessed Marijuana for sale, as more particularly set forth above in paragraph 3(a).

23 ii. Respondent violated Health and Safety Code section 11360(a), in that Respondent
24 sold, transported, or offered to sell Marijuana, as more particularly set forth above in paragraph
25 3(a).

26 iii. Respondent violated Code section 4060, in that he possessed Marijuana without
27 authorization or a valid prescription, as more particularly set forth above in paragraphs 3(a).

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1 **February 20, 2015**

2 iv. Respondent violated Code section 4060, in that he possessed Marijuana without
3 authorization or a valid prescription. The facts and circumstances are that on or about February
4 20, 2015, during a routine traffic stop, the police officer found that Respondent, who was the
5 driver, smelled strongly of Marijuana. When the officer asked Respondent regarding the use of
6 Marijuana, he admitted that he had smoked Marijuana that day.

7 v. Respondent violated Health and Safety Code section 11170, in that Respondent self-
8 administered Marijuana, as more particularly set forth above in paragraph 8(b)(iv).

9 c. Respondent is subject to discipline pursuant to Code section 4301(h), on the grounds
10 of unprofessional conduct, in that on or about February 20, 2015, Respondent used a controlled
11 substance, Marijuana, to the extent or in a manner as to be dangerous or injurious to oneself and
12 to the public, when he drove a vehicle while under the influence of Marijuana, as more
13 particularly set forth above in paragraph 3(a).

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 138598, heretofore issued to Respondent Juan Carlos Morales-Acevedo, 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 at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

12328417.DOC
DOJ Matter ID:SA2015105967
Attachment: Exhibit A: Accusation

Exhibit A

Accusation No. 5678

(JUAN CARLOS MORALES-ACEVEDO)

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2 KENT D. HARRIS
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5678

12 **JUAN CARLOS MORALES-ACEVEDO**
13 **2368 N615 Hanover**
Fresno, CA 93722

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **138598**

16 Respondent.

18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

22 2. On or about March 17, 2014, the Board issued Pharmacy Technician Registration
23 Number TCH 138598 ("registration") to Juan Carlos Morales-Acevedo ("Respondent"). The
24 registration was in full force and effect at all times relevant to the charges brought herein. The
25 license expired on April 30, 2015, and was cancelled on August 2, 2015.

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1. JURISDICTION

2. 3. Business and Professions Code ("Code") section 4300 provides, in pertinent part,
3 that every license issued by the Board is subject to discipline, including suspension or revocation.

4. 4. Code section 4300.1 states:

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

11. STATUTORY PROVISIONS

12. 5. Code section 4301 states, in pertinent part:

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

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

22 (i) The violation of any of the statutes of this state, or any other state, or of the
23 United States regulating controlled substances and dangerous drugs.

24 (l) The conviction of a crime substantially related to the qualifications,
25 functions, and duties of a licensee under this chapter. The record of conviction of a
26 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
27 States Code regulating controlled substances or of a violation of the statutes of this
28 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.

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COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that a 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

7. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13).

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

8. Respondent is subject to discipline under Code section 4301(l), on the grounds of unprofessional conduct, in that on or about February 25, 2015, in the case of *People v. Juan Acevedo aka Juan Morales*, (Super. Fresno County, 2014, Case No. F14911370), Respondent was convicted by the Court on his plea of guilty of violating Health and Safety Code section 11359 (possession of Marijuana for sale), a felony. The circumstances of the crime were that on or about December 26, 2014, following a routine traffic stop, the officer found that Respondent possessed over 218 grams of Marijuana in his vehicle for the purposes of selling it, along with a scale, plastic baggies, cash, and a separate cellular phone for drug transactions. The crime is substantially related to the qualifications, functions or duties of a pharmacy technician.

SECOND CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Controlled Substances)

9. Respondent is subject to discipline pursuant to Code section 4301(j), on the grounds of unprofessional conduct, in that while a registered pharmacy technician, Respondent violated statutes regulating controlled substances, as follows:

December 26, 2014

a. Respondent violated Health and Safety Code section 11359, in that Respondent possessed Marijuana for sale, as more particularly set forth above in paragraph 8.

1 b. Respondent violated Health and Safety Code section 11360(a), in that Respondent
2 sold, transported, or offered to sell Marijuana, as more particularly set forth above in paragraph 8.

3 c. Respondent violated Code section 4060, in that he possessed Marijuana without
4 authorization or a valid prescription, as more particularly set forth above in paragraphs 8.

5 **February 20, 2015**

6 d. Respondent violated Code section 4060, in that he possessed Marijuana without
7 authorization or a valid prescription. The facts and circumstances are that on or about February
8 20, 2015, during a routine traffic stop, the police officer found that Respondent, who was the
9 driver, smelled strongly of Marijuana. When the officer asked Respondent regarding the use of
10 Marijuana, he admitted that he had smoked Marijuana that day.

11 e. Respondent violated Health and Safety Code section 11170, in that Respondent self-
12 administered Marijuana; as more particularly set forth above in paragraph 9(d).

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of a Controlled Substance)**

15 10. Respondent is subject to discipline pursuant to Code section 4301(h), on the grounds
16 of unprofessional conduct, in that on or about February 20, 2015, Respondent used a controlled
17 substance, Marijuana, to the extent or in a manner as to be dangerous or injurious to oneself and
18 to the public, when he drove a vehicle while under the influence of Marijuana, as more
19 particularly set forth above in paragraph 9(d).

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 138598,
24 issued to Juan Carlos Morales-Acevedo;

25 2. Ordering Juan Carlos Morales-Acevedo to pay the Board of Pharmacy the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3; and,

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

DATED: 4/18/16

Virginia Herold

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

SA2015105967
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