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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. 4602

12 **DANNY MORENO**
2574 Sale Place
13 Huntington Park, CA 90255

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 104745

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 2010, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 104745 to Danny Moreno (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Section 4011 of the Code provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and
3 Professions Code, Sec 4000 et esq.)) and the Uniform Controlled Substances Act (Division 10
4 commencing with Section 11000) of the Health and Safety Code)."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
6 revoke a license issued by the Board.

7 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or
8 suspension of a board-issued license by operation of law or by order or decision of the board or a
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
12 suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 7. Section 490 of the Code states, in pertinent part:

15 "(a) In addition to any other action that a board is permitted to take against a licensee, a
16 board may suspend or revoke a license on the ground that the licensee has been convicted of a
17 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
18 or profession for which the license was issued.

19 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
20 discipline a licensee for conviction of a crime that is independent of the authority granted under
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
22 of the business or profession for which the licensee's license was issued.

23 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
24 conviction following a plea of nolo contendere. Any action that a board is permitted to take
25 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
26 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
27 made suspending the imposition of sentence, irrespective of a subsequent order under the
28 provisions of Section 1203.4 of the Penal Code."

1 8. Section 493 of the Code states:

2 “Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.”

12 As used in this section, “license” includes “certificate,” “permit,” “authority,” and
13 “registration.”

14 9. Section 4301 of the Code states, in pertinent part:

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

18 ...

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

24 ...

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

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14 ...

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of or conspiring to violate any provision or term of this chapter or of the applicable
17 federal and state laws and regulations governing pharmacy, including regulations established by
18 the board or by any other state or federal regulatory agency."

19 **REGULATORY PROVISION**

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

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

27 **COST RECOVERY**

28 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the

1 administrative law judge to direct a licentiate found to have committed a violation or violations of
2 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
3 enforcement of the case.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Convictions of Substantially Related Crimes)**

6 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
7 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
8 Respondent was convicted of crimes substantially related to the qualifications, functions, and
9 duties of a pharmacy technician.

10 a. On or about June 12, 2012, after pleading nolo contendere, Respondent was convicted
11 of one misdemeanor count of violating Vehicle Code Section 23152, subdivision (b) [driving
12 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding
13 entitled *The People of the State of California v. Danny Moreno* (Super. Ct. Los Angeles County,
14 2012, No. 2FF01133.) The Court placed Respondent on 36 months probation, with terms and
15 conditions.

16 b. The circumstances surrounding the conviction are that on or about March 15, 2012,
17 during a traffic stop by the California Highway Patrol Department, Respondent was contacted.
18 While speaking to Respondent the officer detected a strong odor of Marijuana emitting from the
19 interior of the vehicle. Respondent was asked to exit the vehicle for a search of his person.
20 During the search, the Officer could smell an odor of an alcoholic beverage emitting from his
21 person. He was observed to have red watery eyes, slurred speech and would sway as he stood.
22 Respondent denied consuming any alcoholic beverages that evening. During a search of the
23 vehicle, the Officer found a partially burned rolled white paper that contained a green leafy
24 substance resembling Marijuana in the right front cup holder. A baggie containing Marijuana was
25 also found in the trunk of the vehicle. Respondent was subsequently arrested for violating
26 Vehicle Code Section 23152, subdivision (a) [driving under the influence of alcohol or drugs],
27 Vehicle Code Section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of
28 alcohol in her blood], and 23222, subdivision (b) [possession of marijuana while driving]. During

1 the booking procedure, Respondent submitted to a breath test that resulted in a breath-alcohol
2 content level of 0.15% on the first reading and 0.12% on the second and third reading.

3 c. On or about January 20, 2012, after pleading guilty, Respondent was convicted of one
4 interlineated misdemeanor count of violating Vehicle Code Section 12500, subdivision (a)
5 [driving without a license] in the criminal proceeding entitled *The People of the State of*
6 *California v. Danny Moreno* (Super. Ct. Los Angeles County, 2012, No. 1DY01521.) The Court
7 placed Respondent on 1 year probation, with terms and conditions.

8 d. The circumstances surrounding the conviction are that on or about December 22,
9 2010, during a traffic stop by the Downey Police Department, Respondent was contacted. While
10 speaking to Respondent the Police Officer detected a strong odor of Marijuana in the vehicle.
11 When asked how much he had with him, Respondent stated, "just a little." During a search of the
12 vehicle the Police Officer found a green tinted clear plastic baggie with Marijuana inside the
13 driver's door compartment. Respondent was subsequently arrested for violating Vehicle Code
14 Section 22350 [unsafe speed], Vehicle Code section 23222, subdivision (b) [possession of
15 marijuana while driving], and Vehicle Code section 14601.2, subdivision (a) [driving while
16 license is suspended or revoked].

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
20 the grounds of unprofessional conduct, in that, on or about March 15, 2012, Respondent used
21 alcoholic beverage to an extent or in a manner dangerous or injurious to himself, another person,
22 or the public. Complainant refers to, and by this reference incorporates, the allegations set forth
23 above in paragraph 12, as though set forth in fully.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Illegal Possession of a Controlled Substance/Dangerous Drug)**

26 14. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
27 the grounds of unprofessional conduct, in that on or about March 15, 2012 and December 22,
28 2010, Respondent was in possession of Marijuana, a controlled substance/dangerous drug.

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraph 12, as though set forth in fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

5 15. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
6 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
7 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraphs 12 through 14, inclusive, as though set forth fully.

9 **DISCIPLINE CONSIDERATIONS**

10 16. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges, as follows:

12 a. On or about June 6, 2011, the Board issued a warning letter to Respondent for his
13 October 8, 2010 arrest.

14 b. On or about October 8, 2010 Respondent was arrested for violating Vehicle Code
15 section 23136, subdivision (a) [minor driving with 0.01% or more of alcohol in his blood] and
16 one count of Vehicle Code section 23222, subdivision (b) [possession of marijuana while
17 driving]. Subsequently, on or about December 22, 2010, charges were filed in the criminal
18 proceeding entitled *The People of the State of California vs. Danny Moreno* (Super. Ct. Los
19 Angeles County, 2010, No. 0CP11950). On or about March 28, 2011, after completing ten
20 Alcoholic Anonymous classes and ten Narcotics Anonymous classes the Court dismissed the
21 case.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board issue a decision:

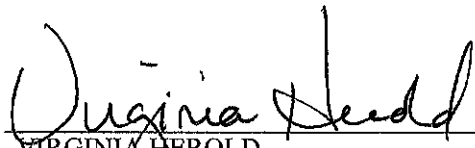
25 1. Revoking or suspending Pharmacy Technician Registration No. TCH 104745, issued
26 to Danny Moreno;

27 2. Ordering Danny Moreno to pay the Board the reasonable costs of the investigation
28 and enforcement of this case, pursuant to section 125.3 of the Code; and

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

DATED: 9/19/13


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

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