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

In the Matter of the Accusation Against:

Case No. 5560

ENRIQUE MORENO 12996 Fern Ave. Chino, CA 91710

Pharmacy Technician Registration No. TCH 104746

Respondent.

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on October 24, 2016.

It is so ORDERED on September 23, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

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1	Kamala D. Harris		
2	Attorney General of California ARMANDO ZAMBRANO Supervising Deputy Attorney General CHRISTINE J. LEE Deputy Attorney General State Bar No. 282502		
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5	300 So. Spring Street, Suite 1702		
	Los Angeles, CA 90013 Telephone: (213) 897-2539		
6	Facsimile: (213) 897-2804 Attorneys for Complainant		
7	BEFORE THE		
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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10	In the Matter of the Accusation Against:	Case No. 5560	
11	ENRIQUE MORENO	Case 140. 3300	
12	12996 Fern Ave.		
13	Chino, CA 91710 STIPULATED SURRENDER OF LICENSE AND ORDER		
14	Pharmacy Technician Registration No. TCH 104746		
15	Respondent.		
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17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
18	entitled proceedings that the following matters are true:		
19	<u>PARTIES</u>		
20	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
21	She brought this action solely in her official capacity and is represented in this matter by Kamala		
22	D. Harris, Attorney General of the State of California, by Christine J. Lee, Deputy Attorney		
23	General.		
24	2. Enrique Moreno (Respondent) is representing himself in this proceeding and has		
25	chosen not to exercise his right to be represented by counsel.		
26	3. On or about June 30, 2010, the Board of Pharmacy issued Pharmacy Technician		
27	Registration No. TCH 104746 to Enrique Moreno (Respondent). The Pharmacy Technician		
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Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5560 and will expire on December 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 5560 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 April 8, 2016.

Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5560 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 5560. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 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.

<u>CULPABILITY</u>

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5560, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 104746 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

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 surrender, without notice to or participation by Respondent. 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 Surrender and Disciplinary Order 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 Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order 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 Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

<u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 104746, issued to Respondent Enrique Moreno, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

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- 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 5560 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$2,502.80 prior to issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 5560 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 7. Respondent may not apply for any license, permit, or registration from the board for three (3) years from the effective date of this decision. Respondent stipulates that should she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application.
- 8. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.

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ACCEPTANCE

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

DATED: 5 11 2014

ENRIQUE MORENO Respondent

ENDORSEMENT

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

Dated: 7/12/16

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California ARMANDO ZAMBRANO Supervising Deputy Attorney General

Deputy Attorney General Attorneys for Complainant

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Exhibit A

Accusation No. 5560

1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California ARMANDO ZAMBRANO Supervising Deputy Attorney General CHRISTINE J. LEE Deputy Attorney General State Bar No. 282502 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2539 Facsimile: (213) 897-2804 Attorneys for Complainant BEFOR BOARD OF DEPARTMENT OF CONSTATE OF CONSTANT OF CON	PHARMACY ONSUMER AFFAIRS
10	In the Matter of the Accusation Against:	Case No. 5560
11	ENRIQUE MORENO	
12 13	12996 Fern Ave. Chino, CA 91710	ACCUSATION
14	Pharmacy Technician Registration No. TCH 104746	
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 issued Pharmacy Technician	
22	Registration Number TCH 104746 to Enrique Moreno (Respondent). The Pharmacy Technician	
23	Registration was in full force and effect at all times relevant to the charges brought herein and	
24	will expire on December 31, 2017, unless renewed.	
25	<u>JURISDICTION</u>	
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.	
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4. Section 4011 of the Code provides:

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

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

- 7. Section 490 of the Code states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code,"

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8. 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."

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

"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.

"(I) 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."
- 10. Health and Safety Code section 11173 subdivision (a) states: 'No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

REGULATORY PROVISION

11. 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."

DANGEROUS DRUGS

Norco, Vicodin, Vicodin ES, Lortab, Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs. Products like these that contain hydrocodone with non-controlled substances are also called hydrocodone combination products. Effective October 6, 2014, hydrocodone combination products were switched at the federal level from Schedule III (21 C.F.R. 1308.13 (e)(1)(iii) and (iv) to Schedule II (21 C.F.R 1308.12 (b)(1). This includes Hydrocodone with APAP drugs. Hydrocodone-Acetaminophen otherwise known as Norco is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(i) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

COST RECOVERY

13. 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

- 14. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (1) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.
- a. On or about June 17, 2015, after pleading guilty, Respondent was convicted of one felony count of violating Health and Safety Code section 11173(a) [obtain controlled substance by fraud], in the criminal proceeding entitled *The People of the State of California v. Enrique*

Moreno (Super. Ct. Riverside County, 2015, No. RIF500098). The court sentenced Respondent to serve 120 days in jail, placed him on probation for a period of 36 months, and ordered him to pay fines, fees, and restitution.

The circumstances surrounding the conviction are that in December 2012 the Respondent falsely refilled Norco prescriptions for his daughter. Another pharmacy employee contacted the doctor's office to verify the prescriptions and discovered the prescription refills were never approved.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

15. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct as Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 14 as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Violation of Pharmacy Act)

16. Respondent is subject to disciplinary action under section 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent was convicted of a crime and committed an act that was in violation of the Pharmacy Act. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 14 through 15, inclusive, as though set forth fully.

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 104746, issued to Enrique Moreno;

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