

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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3 RITA M. LANE, State Bar No. 171352
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8
9 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 3006

15 MARCOS J. ESPINOZA
51-725 Alvarado
La Quinta, CA 92253

**DEFAULT DECISION
AND ORDER**

16 Pharmacy Technician Registration No. TCH
32897

[Gov. Code, §11520]

17 Respondent.
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19
20 FINDINGS OF FACT

21 1. On or about July 16, 2007, Complainant Virginia Herold, in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
23 filed Accusation No. 3006 against Marcos J. Espinoza (Respondent) before the Board of
24 Pharmacy.

25 2. On or about April 4, 2000, the Board of Pharmacy issued Pharmacy
26 Technician Registration Number TCH 32897 to Respondent. The Pharmacy Technician
27 registration was in full force and effect at all times relevant to the charges brought herein and
28 expired on August 31, 2007.

1 3. On or about July 25, 2007, Tess Bautista, an employee of the Department
2 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3006, Statement
3 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
4 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
5 is 51-725 Alvarado, La Quinta, CA 92253. A copy of the Accusation, the related documents,
6 and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

7 4. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. Government Code section 11506 states, in pertinent part:

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service
15 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
16 Accusation No. 3006.

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

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

22 8. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it, contained in
25 Exhibits A, B and C, finds that the allegations in Accusation No. 3006 are true.

26 9. The total costs for investigation and enforcement are \$4,303.50 as of
27 October 5, 2007. A copy of the Certificate of Costs by the Attorney General's Office is attached
28

1 as Exhibit B, and is incorporated herein by reference. A copy of the Certificate of Costs by the
2 Board is attached as Exhibit C, and is incorporated herein by reference.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Marcos J. Espinoza
5 has subjected his Pharmacy Technician Registration No. TCH 32897 to discipline.

6 2. A copy of the Accusation and the related documents and Declaration of
7 Service are attached.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
10 Technician Registration based upon the following violations alleged in the Accusation:

11 5. Respondent is subject to disciplinary action under section 4301(f) for an
12 act of dishonesty, fraud or deceit, as more particularly alleged below:

13 a. On or about October 8, 2005, Respondent was employed as a part-
14 time pharmacy technician at Sav-on #9646 Pharmacy in Palm Desert, California.

15 b. On or about October 8, 2005, Respondent stole a bottle of
16 hydrocodone with APAP 10-325 from his employer by subterfuge, transferring the
17 contents of the bottle into his pants pocket.

18 6. Respondent is subject to disciplinary action under section 4301(j) in
19 conjunction with section 4060 for possession of a controlled substance without a legitimate
20 prescription. as more particularly alleged in paragraph 5(a) and (b) above and incorporated herein
21 by reference.

22 7. Respondent is subject to disciplinary action under section 4301(j) in
23 conjunction with H&S Code section 11170 for illegally furnishing a controlled substance to
24 himself, as more particularly alleged in paragraph 5(a) and (b) above and incorporated herein by
25 reference.

26 8. Respondent is subject to disciplinary action under section 4301(j) in
27 conjunction with H&S Code section 11173(a) for obtaining a controlled substance by fraud,
28

1 deceit, subterfuge or concealment of a material fact, as more particularly alleged in paragraph
2 5(a) and (b) above and incorporated herein by reference.

3 9. Respondent is subject to disciplinary action under section 4301(h) for
4 administering a controlled substance to himself or using a controlled substance to the extend or
5 in a manner as to impair his ability to practice under his license, as more particularly alleged
6 below:

7 a. On or about August 25, 2005, while on duty as a pharmacy
8 technician at Sav-on #9646 in Palm Desert, California, Respondent was observed to be
9 "groggy" and acting strangely. The Pharmacist-in-Charge suspected substance abuse and
10 sent Respondent home. Later that same day, the pharmacist phoned Respondent and
11 advised him of Sav-on's counseling program. The next day, Respondent failed to show
12 up for his scheduled work day at the pharmacy.

13 10. Respondent is subject to disciplinary action under section 4301(l) for
14 conviction for a crime substantially related to the qualifications, functions, or duties of a
15 pharmacy technician, as more particularly alleged below:

16 a. On or about August 24, 2005, in Riverside County Superior Court
17 Case No. INM159470, Respondent pled guilty to violation of Penal Code section 490.5
18 (theft of retail merchandise).

19 b. The facts and circumstances surrounding the conviction are that
20 Respondent stole numerous articles of clothing from Robinson's-May on June 17, 2005.

21 c. Respondent was sentenced to summary probation for 36 months, to
22 one day in jail with credit for time served, and to pay various fines and restitution.

23 d. On or about February 1, 2006, Respondent's probation was
24 revoked and the next day a warrant for his arrest issued. He remains at large.

25 ORDER

26 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 32897,
27 heretofore issued to Respondent Marcos J. Espinoza, is revoked.


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

6 This Decision shall become effective on December 20, 2007.

7 It is so ORDERED November 20, 2007

8 BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 By 
12 WILLIAM POWERS
13 Board President

13 s0170518.wpd
14 DOJ docket number:SD2006801518

- 15 Attachments:
- 16 Exhibit A: Accusation No.3006, Related Documents, and Declaration of Service
 - 17 Exhibit B: Certification of Costs: Declaration of Rita M. Lane
 - 18 Exhibit C: Certification of Costs by the Board of Pharmacy

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Exhibit A

Accusation No. 3006,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARGARET A. LAFKO
Supervising Deputy Attorney General
3 RITA M. LANE, State Bar No. 171352
Deputy Attorney General
4 California Department of Justice
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10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 3006

14 MARCOS J. ESPINOZA
51-725 Alvarado
15 La Quinta, CA 92253

ACCUSATION

16 Pharmacy Technician Registration No. TCH
32897

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 4, 2000, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 32897 to Marcos J. Espinoza (Respondent). The Pharmacy
25 Technician registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2007, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws of the Business and Professions
4 Code:

5 A. Section 4300(a) of the Code states in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 B. Section 4301 of the Code states in pertinent part:

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

12

13 (f) The commission of any act involving moral turpitude, dishonesty,
14 fraud, deceit, or corruption, whether the act is committed in the course of relations
15 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

16

17 (h) The administering to oneself, of any controlled substance, or the use of
18 any 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,
20 or to any other person or to the public, or to the extent that the use impairs the
21 ability of the person to conduct with safety to the public the practice authorized by
22 the license.

23

24 (j) The violation of any of the statutes of this state, or any other state, or of
25 the United States regulating controlled substances and dangerous drugs.

26

27 (l) The conviction of a crime substantially related to the qualifications,
28 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

1 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
2 or when an order granting probation is made suspending the imposition of
3 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
4 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
5 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
6 information, or indictment.

7 C. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
12 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
13 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
14 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
15 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
16 This section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
19 practitioner, or physician assistant, when in stock in containers correctly labeled
20 with the name and address of the supplier or producer.

21 Nothing in this section authorizes a certified nurse-midwife, a nurse
22 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
23 own stock of dangerous drugs and devices.

24 D. Section 123.5 provides that the Board may request the administrative law judge to
25 direct any licentiate found to have committed a violation or violations of the licensing act to
26 pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the
27 case, including charges imposed by the Attorney General. Under section 125.3(c), a certified
28 copy of the actual costs or a good faith estimate of costs where actual costs are not available,
including investigative and enforcement costs and charges of the Attorney General up to the date
of the hearing, signed by the designated representative of the entity bringing the proceeding shall
be *prima facie* evidence of the reasonable costs of investigation and prosecution of the case.

4. This Accusation also refers to the following sections of the Health & Safety Code
(H&S Code):

A. H&S Code section 11170 states that “[n]o person shall prescribe, administer, or
furnish a controlled substance for himself.”

B. H&S Code section 11173 states in pertinent part that no person shall obtain a
controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

1 **DRUG**

2 5. Hydrocodone/APAP is a narcotic Schedule III controlled substance, pursuant to
3 H&S Code section 11056.

4 **CHARGES AND ALLEGATIONS**

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Act of Dishonesty, Fraud and Deceit)**

7 6. Respondent is subject to disciplinary action under section 4301(f) for an act of
8 dishonesty, fraud or deceit, as more particularly alleged below:

9 A. On or about October 8, 2005, Respondent was employed as a part-time pharmacy
10 technician at Sav-on #9646 Pharmacy in Palm Desert, California.

11 B. On or about October 8, 2005, Respondent stole a bottle of hydrocodone with
12 APAP 10-325 from his employer by subterfuge, transferring the contents of the bottle into his
13 pants pocket.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Possession of a Controlled Substance W/O Prescription)**

16 7. Respondent is subject to disciplinary action under section 4301(j) in conjunction
17 with section 4060 for possession of a controlled substance without a legitimate prescription, as
18 more particularly alleged in paragraph 6(A) and (B) above and incorporated herein by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)**

21 8. Respondent is subject to disciplinary action under section 4301(j) in conjunction
22 with H&S Code section 11170 for illegally furnishing a controlled substance to himself, as more
23 particularly alleged in paragraph 6(A) and (B) above and incorporated herein by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)**

26 9. Respondent is subject to disciplinary action under section 4301(j) in conjunction
27 with H&S Code section 11173(a) for obtaining a controlled substance by fraud, deceit,

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1 subterfuge or concealment of a material fact, as more particularly alleged in paragraph 6(A) and
2 (B) above and incorporated herein by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Administering Controlled Substance to Oneself/Impairment)**

5 10. Respondent is subject to disciplinary action under section 4301(h) for
6 administering a controlled substance to himself or using a controlled substance to the extend or
7 in a manner as to impair his ability to practice under his license, as more particularly alleged
8 below:

9 On or about August 25, 2005, while on duty as a pharmacy technician at Sav-on #9646 in
10 Palm Desert, California, Respondent was observed to be "groggy" and acting strangely. The
11 Pharmacist-in-Charge suspected substance abuse and sent Respondent home. Later that same
12 day, the pharmacist phoned Respondent and advised him of Sav-on's counseling program. The
13 next day, Respondent failed to show up for his scheduled work day at the pharmacy.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Substantially Related Criminal Conviction - Incident:6/17/05)**

16 11. Respondent is subject to disciplinary action under section 4301(l) for conviction
17 for a crime substantially related to the qualifications, functions, or duties of a pharmacy
18 technician, as more particularly alleged below:

19 A. On or about August 24, 2005, in Riverside County Superior Court Case No.
20 INM159470, Respondent pled guilty to violation of Penal Code section 490.5 (theft of retail
21 merchandise).

22 B. The facts and circumstances surrounding the conviction are that Respondent stole
23 numerous articles of clothing from Robinson's-May on June 17, 2005.

24 C. Respondent was sentenced to summary probation for 36 months, to one day in jail
25 with credit for time served, and to pay various fines and restitution.

26 D. On or about February 1, 2006, Respondent's probation was revoked and the next
27 day a warrant for his arrest issued. He remains at large.

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1 AGGRAVATING FACTOR

2 12. As a result of his theft of the hydrocodone/APAP in October 2005, an arrest
3 warrant issued on or about January 31, 2006 for Respondent in the Superior Court of California,
4 County of Riverside in *People v. Marcos Jesus Espinoza*, Case No. INM164262. Respondent
5 remains at large.

6 PRAYER

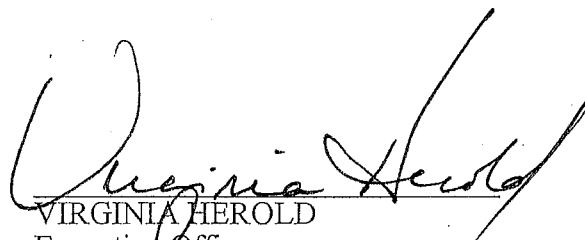
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 32897,
10 issued to Marcos J. Espinoza;

11 2. Ordering Marcos J. Espinoza to pay the Board of Pharmacy the reasonable costs
12 of the investigation and enforcement of this case, pursuant to Business and Professions Code
13 section 125.3; and

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

15 DATED: 7/16/07

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18 
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant
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of the State of California
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10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3006

13 MARCOS J. ESPINOZA

STATEMENT TO RESPONDENT

14 Respondent.

[Gov. Code §§ 11504, 11505(b)]

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16
17 TO RESPONDENT:

18 Enclosed is a copy of the Accusation that has been filed with the Board of
19 Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

20 Unless a written request for a hearing signed by you or on your behalf is delivered
21 or mailed to the Board, represented by Deputy Attorney General Rita M. Lane, within fifteen (15)
22 days after a copy of the Accusation was personally served on you or mailed to you, you will be
23 deemed to have waived your right to a hearing in this matter and the Board may proceed upon the
24 Accusation without a hearing and may take action thereon as provided by law.

25 The request for hearing may be made by delivering or mailing one of the enclosed
26 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
27 in section 11506 of the Government Code, to

28 ///

1 Rita M. Lane
2 Deputy Attorney General
3 110 West "A" Street, Suite 1100
4 San Diego, California 92101

5 P.O. Box 85266
6 San Diego, California 92186-5266.

7 You may, but need not, be represented by counsel at any or all stages of these
8 proceedings.

9 The enclosed Notice of Defense, if signed and filed with the Board, shall be
10 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any
11 objection to the form of the Accusation unless you file a further Notice of Defense as provided in
12 section 11506 of the Government Code within fifteen (15) days after service of the Accusation
13 on you.

14 If you file any Notice of Defense within the time permitted, a hearing will be held
15 on the charges made in the Accusation.

16 The hearing may be postponed for good cause. If you have good cause, you are
17 obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los
18 Angeles, CA 90013, within ten (10) working days after you discover the good cause. Failure to
19 notify the Office of Administrative Hearings within ten (10) days will deprive you of a
20 postponement.

21 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
22 enclosed.

23 If you desire the names and addresses of witnesses or an opportunity to inspect
24 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
25 custody or control of the Board you may send a Request for Discovery to the above designated
26 Deputy Attorney General.

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

28 It may be possible to avoid the time, expense and uncertainties involved in an
administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Board of Pharmacy but, once approved, it would be incorporated into a final order.

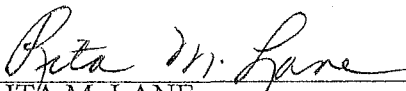

3 Any stipulation must be consistent with the Board's established disciplinary
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state
6 agency bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General Rita
9 M. Lane at the earliest opportunity.

10 DATED: July 25, 2007

11 EDMUND G. BROWN JR., Attorney General
12 of the State of California

13 LINDA K. SCHNEIDER
14 Supervising Deputy Attorney General

15 
16 RITA M. LANE
17 Deputy Attorney General 

18 Attorneys for Complainant
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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MARCOS J. ESPINOZA

Respondent.

Case No. 3006

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against:

MARCOS J. ESPINOZA

Respondent.

Case No. 3006

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

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Check appropriate box:

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I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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of the State of California
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BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3006

13 MARCOS J. ESPINOZA

REQUEST FOR DISCOVERY

14 Respondent.

[Gov. Code § 11507.6]
15

16
17 TO RESPONDENT:

18 Under section 11507.6 of the Government Code of the State of California, parties
19 to an administrative hearing, including the Complainant, are entitled to certain information
20 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
21 Government Code concerning such rights is included among the papers served.

22 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
23 ARE HEREBY REQUESTED TO:

- 24 1. Provide the names and addresses of witnesses to the extent known to the
25 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
26 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
27 the following in the possession or custody or under control of the Respondent:

28 ///

1 a. A statement of a person, other than the Respondent, named in the initial
2 administrative pleading, or in any additional pleading, when it is claimed that the act or
3 omission of the Respondent as to this person is the basis for the administrative
4 proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made by any
6 party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the Respondent and
8 of other persons having personal knowledge of the acts, omissions or events which are the
9 basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical and
11 blood examinations and things which the Respondent now proposes to offer in evidence;

12 e. Any other writing or thing which is relevant and which would be
13 admissible in evidence, including but not limited to, any patient or hospital records
14 pertaining to the persons named in the pleading;

15 f. Investigative reports made by or on behalf of the Respondent pertaining to
16 the subject matter of the proceeding, to the extent that these reports (1) contain the names
17 and addresses of witnesses or of persons having personal knowledge of the acts,
18 omissions or events which are the basis for the proceeding, or (2) reflect matters
19 perceived by the investigator in the course of his or her investigation, or (3) contain or
20 include by attachment any statement or writing described in (a) to (e), inclusive, or
21 summary thereof.

22 For the purpose of this Request for Discovery, "statements" include written
23 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
24 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
25 and written reports or summaries of these oral statements.

26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which

28 ///

1 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
2 work product.

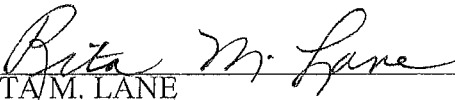
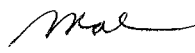
3 Your response to this Request for Discovery should be directed to the undersigned
4 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
5 **30 days after service** of the Accusation.

6 Failure without substantial justification to comply with this Request for Discovery
7 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
8 of the Government Code.

9 DATED: July 25, 2007

10 EDMUND G. BROWN JR., Attorney General
11 of the State of California

12 LINDA K. SCHNEIDER
13 Supervising Deputy Attorney General

14
15 
16 RITA M. LANE
17 Deputy Attorney General 
18 Attorneys for Complainant

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Marcos J. Espinoza**
Case No.: **3006**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 25, 2007, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Marcos J. Espinoza
51-725 Alvarado
La Quinta, CA 92253

Certified Article Number

7160 3901 9845 0147 4410

SENDER'S RECORD

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 25, 2007, at San Diego, California.

Tess Bautista

Declarant

Signature

80150628.wpd

cc: Kim deLong, Enforcement Analyst, Board of Pharmacy

7360 3901 9845 0147 4410

TO: Marcos J. Espinoza
51-725 Alvarado
La Quinta, CA 92253

SENDER: Rita M. Lane

REFERENCE: SD2006801518

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Exhibit B

Certification of Costs: Declaration of Rita M. Lane

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RITA M. LANE, State Bar No. 171352
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2614
Facsimile: (619) 645-2061

8 Attorneys for Complainant
9

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

12 In the Matter of the Accusation Against:

Case No. 3006

13 MARCOS J. ESPINOZA

14 Respondent.

**CERTIFICATION OF
PROSECUTION COSTS:
DECLARATION OF RITA M. LANE**

[Business and Professions Code section
125.3]

17 I, RITA M. LANE, hereby declare and certify as follows:

18 1. I am a Deputy Attorney General employed by the California Department of
19 Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in
20 the Civil Division of the Office. I have been designated as the representative to certify the costs
21 of prosecution by DOJ and incurred by the Board of Pharmacy in this case. I make this
22 certification in my official capacity and as an officer of the court and as a public employee
23 pursuant to Evidence Code section 664.

24 2. I represent the Complainant, Virginia Herold, Executive Officer of the
25 Board of Pharmacy, in this action. I was assigned to handle this case on or around July 14, 2006.

26 3. Our Office's computerized case management system reflect that the
27 following persons have also performed tasks related to this matter: Margaret A. Lafko,
28 Supervising Deputy Attorney General and Susan L. Fitzgerald, Deputy Attorney General.

1 4. I am familiar with the time recording and billing practices of DOJ and the
2 procedure for charging the client agency for the reasonable and necessary work performed on a
3 particular case. It is the duty of the time keeping employees to keep track of the time spent and
4 to report that time in DOJ's computerized case management system at or near the time of the
5 tasks performed.

6 5. On October 5, 2007, I requested a billing summary for this case from the
7 Accounting Department of the DOJ. In response on, October 5, 2007, I received a document
8 entitled "Matter Time Activity by Professional Type." I hereby certify that the Matter Time
9 Activity by Professional Type, attached hereto as Exhibit A, and herein incorporated by
10 reference, is a true and correct copy of the billing summary for this matter that I received from
11 the Accounting Department. The summary includes the billing costs incurred by myself, as well
12 as other professionals of the DOJ who worked on the matter; and sets forth the tasks undertaken,
13 the amount of time billed for the activity, and the billing rate by professional type. The billing
14 summary is comprehensive of the charges by the Office to the Board of Pharmacy through
15 October 5, 2007. It does not include billing for tasks performed after October 5, 2007.

16 6. Based upon the time reported through October 5, 2007, as set forth in
17 Exhibit A, DOJ has billed the Board of Pharmacy \$2,093.50 for the time spent working on the
18 above entitled case.

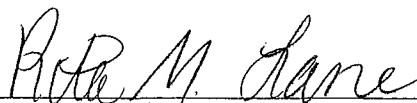
19 7. To the best of my knowledge the items of cost set forth in this certification
20 are correct and were necessarily incurred in this case.

21 I certify under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on October 5, 2007, in the City of San Diego, California.

24

25


RITA M. LANE
Deputy Attorney General

26

Declarant

27

28



Matter Time Activity By Professional Type

As Of 10/5/2007

Trans #	Date	Section	Client	Task	Hours Worked	Rate	Amount	Adj?	Stmn Date
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Matter ID: SD2006801518 Date Opened: 07/18/2006
Description: Espinoza, Marcos J., TCH

Professional Type: ATTORNEY

Fiscal Year: 2007-2008

Professional: Rita M. Lane

800293532	07/24/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		07/31/07
800293533	07/24/07	CV-LIC:110	03583	Contract/Document Preparation	0.25	\$158.00	\$39.50		07/31/07
800295515	08/01/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		08/31/07
800296148	08/03/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		08/31/07
800303401	08/31/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		08/31/07
800303643	09/04/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		09/30/07
800306266	09/13/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		09/30/07

Rita M. Lane Totals: 1.75 \$276.50

2007-2008 Totals: 1.75 \$276.50

Fiscal Year: 2006-2007

Professional: Margaret Ann Lafko

800272623	05/03/07	CV-LIC:110	03583	Supervisory Review	0.25	\$158.00	\$39.50		05/31/07
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Margaret Ann Lafko Totals: 0.25 \$39.50

Professional: Rita M. Lane

800205117	07/18/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		07/31/06
800205584	07/19/06	CV-LIC:110	03583	Document Analysis	0.50	\$158.00	\$79.00		07/31/06
800208984	08/03/06	CV-LIC:110	03583	Document Analysis	0.50	\$158.00	\$79.00		08/31/06
800218217	09/15/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		09/30/06
800225439	10/16/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		10/31/06
800234739	11/27/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		11/30/06
800235186	11/28/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		11/30/06
800237989	12/01/06	CV-LIC:110	03583	Document Analysis	1.00	\$158.00	\$158.00		12/31/06
800245286	01/04/07	CV-LIC:110	03583	Document Analysis	1.00	\$158.00	\$158.00		01/31/07
800272554	05/03/07	CV-LIC:110	03583	Pleading Preparation	0.50	\$158.00	\$79.00		05/31/07
800278226	05/25/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		05/31/07
800283502	06/14/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		06/30/07

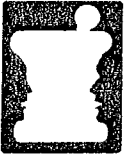
Matter Time Activity By Professional Type

As Of 10/5/2007

Trans #	Date	Section	Client	Task	Hours Worked	Rate	Amount	Adj?	Stmn Date
800288494	06/29/07	CV-LIC:110	03583	Client Communication	0.50	\$158.00	\$79.00		06/30/07
Rita M. Lane Totals:					5.75		\$908.50		
Professional: Susan L. Fitzgerald									
800272468	05/02/07	CV-LIC:110	03583	Case Evaluation/Assessment	3.50	\$158.00	\$553.00		05/31/07
800272679	05/03/07	CV-LIC:110	03583	Pleading Preparation	2.00	\$158.00	\$316.00		05/31/07
Susan L. Fitzgerald Totals:					5.50		\$869.00		
2006-2007 Totals:					11.50		\$1,817.00		
ATTORNEY Totals:					13.25		\$2,093.50		
SD2006801518 Totals:					13.25		\$2,093.50		

Exhibit C

Certification of Costs by the Board of Pharmacy



California State Board of Pharmacy
1625 N. Market Blvd, Suite N 219, Sacramento, CA 95834
Phone (916) 574-7900
Fax (916) 574-8618
www.pharmacy.ca.gov

STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

**CERTIFICATION OF COSTS
OF INVESTIGATION
BY AGENCY EXECUTIVE OFFICER**

I, Virginia Herold, declare that I am the Executive Officer of the Board of Pharmacy, and in that capacity certify pursuant to the provisions of the Business and Professions Code Sections 4350 and 4359, that I filed Accusation Number **3006** against **Marcos J. Espinoza**, who holds the pharmacy technician license number **TCH 32897**.

CERTIFICATION OF COSTS INCURRED

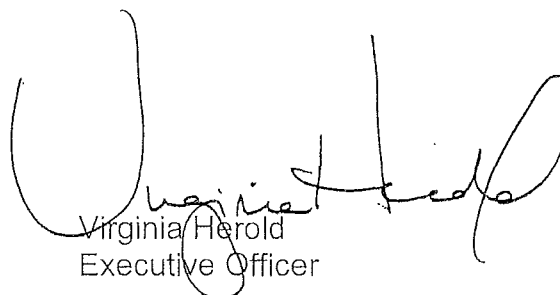
In my capacity as the Executive Officer, I review and approve payment for costs incurred by the Board of Pharmacy in the enforcement of the laws and regulations under its jurisdiction. I have reviewed the records of the agency and these reflect that the following costs and fees have been incurred by the agency in connection with the investigation of Accusation Number **3006**.

1. Inspector's costs for	
34 hours at \$65.00 per hour	\$ 2,210.00
Total Investigative Costs	\$ 2,210.00

CERTIFICATION

I certify pursuant to the provisions of Section 125.3 of the Business and Professions Code of the State of California that, to the best of my knowledge, the foregoing statement of costs incurred by the Board of Pharmacy is true and correct and that the amounts set forth therein do not exceed the actual and reasonable costs of investigation and prosecution in Case Number **3006**.

Dated: October 23, 2007


Virginia Herold
Executive Officer