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

In the Matter of the Accusation Against:

Case No. 3514

**NESTOR SICAIBOS AISPURO  
636 1/2 N. Cummings Street  
Los Angeles, CA 90033  
Pharmacy Technician Registration No. TCH  
90528**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about July 1, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3514 against Nestor Sicaibos Aispuro (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 23, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 90528 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on December 31, 2010. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about July 20, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3514, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
3 is required to be reported and maintained with the Board, which was and is: 636 1/2 N.  
4 Cummings Street, Los Angeles, CA 90033.

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
7 124.

8 5. On or about July 24, 2010, the signed domestic return receipt card was returned by  
9 the U.S. Postal Service.

10 6. Government Code section 11506 states, in pertinent part:

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
18 3514.

19 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on the  
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
28 file at the Board's offices regarding the allegations contained in Accusation No. 3514, finds that  
the charges and allegations in Accusation No. 3514, are separately and severally, found to be true  
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and  
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
3 and Enforcement is \$4785.00 as of April 6, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Nestor Sicaibos Aispuro has  
6 subjected his Pharmacy Technician Registration No. TCH 90528 to discipline.

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

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

11 a. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
12 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,  
13 Respondent was convicted of a crime substantially related to the qualifications, functions or  
14 duties of a pharmacy technician. On or about April 2, 2009, after pleading guilty, Respondent  
15 was convicted of one felony count of violating Health and Safety Code section 11359 [possession  
16 of marijuana for sale] in the criminal proceeding entitled *The People of the State of California v.*  
17 *Nestor Sicarios Sicarios* (Super. Ct. San Diego County, 2007, No. CS227687). The Court  
18 sentenced Respondent to 89 days in San Diego County Jail and placed him on probation for 3  
19 years, with terms and conditions. The circumstances surrounding the conviction are that on or  
20 about March 27, 2009, Respondent was found to be in possession of a controlled substance for  
21 sale, to wit: Marijuana.

22 b. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
23 (o), for violating section 4060, in that on or about March 27, 2009, Respondent was found to be in  
24 possession of a controlled substance.

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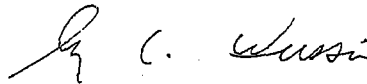
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 90528, heretofore issued to Respondent Nestor Sicaibos Aispuro, 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 on June 22, 2011.

It is so ORDERED May 23, 2011.



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STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

50876742.DOC  
DOJ Matter ID:LA2009604688

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHEL W. VALENTINE  
Supervising Deputy Attorney General  
4 State Bar No. 153078  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2540  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3514

13 **NESTOR SICAIBOS AISPURO**  
a.k.a., **NESTOR SICAIROS AISPURO**  
14 a.k.a., **NESTOR SICARIOS SICARIOS**  
a.k.a., **NESTOR SICARIOS**  
636 1/2 N. Cummings Street  
Los Angeles, CA 90033

**A C C U S A T I O N**

15 Pharmacy Technician Registration  
16 No. TCH 90528

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 23, 2009, the Board of Pharmacy (Board) issued Pharmacy  
24 Technician Registration No. TCH 90528 to Nestor Sicaibos Aispuro, also known as Nestor  
25 Sicairos Aispuro, Nestor Sicarios Sicarios, and Nestor Sicarios (Respondent). The Pharmacy  
26 Technician Registration was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on December 31, 2010, unless renewed.

28 ///

JURISDICTION

1  
2 3. This Accusation is brought before the Board under the authority of the following  
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b), provides that the suspension/expiration of a license shall  
6 not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
7 within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

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

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

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

23 6. Section 4060 states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon  
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
3 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
5 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
6 labeled with the name and address of the supplier or producer."

7 7. Section 4300 provides, in pertinent part, that every license issued by the Board is  
8 subject to discipline, including suspension or revocation.

9 8. Section 4301 states, in pertinent part:

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

13 .....

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

16 .....

17 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or  
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the



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

6 . . . .

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

11 **REGULATORY PROVISIONS**

12 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

19 **COST RECOVERY**

20 10. Section 125.3 states, in pertinent part, that the Board may request the administrative  
21 law judge to direct a licensee found to have committed a violation or violations of the licensing  
22 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
23 case.

24 **CONTROLLED SUBSTANCE**

25 11. "Marijuana," is a Schedule I controlled substance as defined in Health and Safety  
26 Code section 11054(d)(13) and is categorized as a dangerous drug pursuant to section 4022.

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FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

12: Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about April 2, 2009, after pleading guilty, Respondent was convicted of one felony count of violating Health and Safety Code section 11359 [possession of marijuana for sale] in the criminal proceeding entitled *The People of the State of California v. Nestor Sicarios Sicarios* (Super. Ct. San Diego County, 2007, No. CS227687). The Court sentenced Respondent to 89 days in San Diego County Jail and placed him on probation for 3 years, with terms and conditions. The circumstances surrounding the conviction are that on or about March 27, 2009, Respondent was found to be in possession of a controlled substance for sale, to wit: Marijuana.

SECOND CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance)

13. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), for violating section 4060, in that on or about March 27, 2009, Respondent was found to be in possession of a controlled substance. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, 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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 90528, issued to Respondent.

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;

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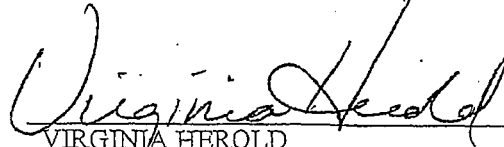
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/1/10



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

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