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

In the Matter of the Accusation Against:

JUAN CARLOS BRICENO
253 1/2 South Columbia Avenue
Los Angeles, CA 90026

Pharmacy Technician
Registration No. TCH 68987

Respondent.

Case No. 3701

DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 3, 2010, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 3701 against Juan Carlos Briceno ("Respondent") before the Board of Pharmacy, Department of Consumer Affairs.

2. On or about September 27, 2006, the Board of Pharmacy, Department of Consumer Affairs ("Board") issued Pharmacy Technician Registration No. TCH 68987 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

1 3. On or about November 10, 2010, Respondent was served by certified mail copies
2 of the following documents: Accusation No. 3701, Statement to Respondent, Notice of Defense
3 forms, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7). A copy of the Accusation and Declaration of Service are attached hereto
5 as Exhibit "A" and are incorporated as if fully set forth herein.

6 4. The Respondent was served at his address of record, which is:

7 253 1/2 South Columbia Avenue
8 Los Angeles, CA 90026

9 Pursuant to Business and Professions Code section 136 and/or the agency specific statute
10 or regulation, the Respondent is required to notify the Board of any change in mailing address
11 within 30 days after the change, unless the Board has specified by regulations a shorter time
12 period.

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

15 6. Government Code section 11506 provides:

16 (a) Within 15 days after service of the accusation the respondent may file
17 with the agency a notice of defense in which the respondent may:

18 (1) Request a hearing.

19 (2) Object to the accusation upon the ground that it does not state acts or
20 omissions upon which the agency may proceed.

21 (3) Object to the form of the accusation on the ground that it is so
22 indefinite or uncertain that the respondent cannot identify the transaction
23 or prepare a defense.

24 (4) Admit the accusation in whole or in part.

25 (5) Present new matter by way of defense.

26 (6) Object to the accusation upon the ground that, under the
27 circumstances, compliance with the requirements of a regulation would
28 result in a material violation of another regulation enacted by another
department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of
defense upon any or all of these grounds but all of these notices shall be
filed within that period unless the agency in its discretion authorizes the
filing of a later notice.

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

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Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.
(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.
(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

7. Respondent has waived his right to a hearing on the merits of Accusation No. 3701 because he failed to file a notice of defense within 15 days after service upon him of the Accusation.

8. California Government Code section 11520 provides:

- (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.
- (b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.
- (c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:
 - (1) Failure of the person to receive notice served pursuant to Section 11505.
 - (2) Mistake, inadvertence, surprise, or excusable neglect.

9. Pursuant to its authority under Government Code section 11520, the Board of Pharmacy, Department of Consumer Affairs finds the Respondent is in default. The Board of Pharmacy takes action without further hearing and based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet, and by taking official notice of all the investigatory reports, exhibits and statements contained therein.

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1 (b) Violation of Business and Professions Code section 4301(f) and 4301(g) for
2 unprofessional conduct in that Respondent knowingly made or signed a certificate or other
3 document that falsely represented the existence or nonexistence of a state of facts and the act
4 involved moral turpitude, dishonesty, fraud, deceit, or corruption. On or about January 26, 2010,
5 the Board received correspondence from the Respondent including a Pharmacy Technician
6 renewal form and payment. The renewal form included the following question: "Since you last
7 renewed your license, have you had any license disciplined by a government agency or other
8 disciplinary body; or, have you been convicted of any crime in any state, the USA and its
9 territories, military court or a foreign country." The Respondent answered "No".

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

In the Matter of the Accusation Against:

JUAN CARLOS BRICENO
253 1/2 South Columbia Avenue
Los Angeles, CA 90026

Pharmacy Technician
Registration No. TCH 68987

Respondent.

Case No. 3701

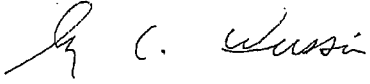
ORDER
[Gov. Code, §11520]

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 68987, heretofore issued to Respondent Juan Carlos Briceno, is revoked.

Pursuant to Government Code section 11520(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 October 12, 2011.

It is so ORDERED September 12, 2011.



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

Attachment: Exhibit "A"
60645759.DOC; LA2010502515

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 ARMANDO ZAMBRANO
Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2542
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11
12 In the Matter of the Accusation Against:

Case No. 3701

13
14 **JUAN C. BRICENO**
253 1/2 South Columbia Avenue
15 **Los Angeles, CA 90026**

ACCUSATION

16 **Pharmacy Technician**
17 **Registration No. TCH 68987**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy.
- 24 2. On or about September 27, 2006, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 68987 to Juan C. Briceno ("Respondent"). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein and
27 will expire on January 31, 2012, unless renewed.

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

7 7. Section 490 of the Code states:

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

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

20 REGULATORY PROVISION

21 8. California Code of Regulations, title 16, section 1770, states:

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

28 COST RECOVERY

9 Section 125.3 of the Code states, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 10. Respondent is subject to disciplinary action under sections 4301(j), 4301(l) and
4 490(a) of the Code in that Respondent was convicted of the following crime substantially related
5 to the qualifications, functions, and duties of a pharmacy technician.

6 (a) On or about August 3, 2009, in the Superior Court of the State of California, County
7 of Los Angeles, Respondent was convicted of the crime of Possession of Marijuana for Sale, in
8 violation of Health and Safety Code section 11359. The Respondent was placed on formal
9 probation for a period of three (3) years, ordered to serve two (2) days in jail and register as a
10 drug offender pursuant to Health and Safety Code section 11590. (People v. Juan Carlos Briceno,
11 Superior Court of the State of California, County of Los Angeles, Case No. BA352644).

12 (b) The facts and circumstances surrounding the conviction are that on or about February
13 6, 2009, police officers stopped the Respondent's vehicle for a traffic violation. While speaking
14 with Respondent, officers noticed the odor of marijuana emitting from the vehicle. When asked
15 about the marijuana, the Respondent admitted "Yes. I have some weed on the driver's side door."
16 During a consent search, officers discovered a black zipper pouch containing twenty (20)
17 individually packaged baggies containing marijuana. Police also seized approximately \$175.00
18 from the Respondent. The arresting officer indicated the denomination of the currency is
19 consistent with the sales of narcotics.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Falsely Representing Facts Regarding Conviction of Crime)

22 11. Respondent is subject to disciplinary action under sections 4301(f), 4301(g) of the
23 Code for unprofessional conduct in that Respondent knowingly made or signed a certificate or
24 other document that falsely represents the existence or nonexistence of a state of facts.

25 (a) On or about January 26, 2010, the Board received correspondence from the
26 Respondent including a Pharmacy Technician renewal form and payment. The Respondent's
27 renewal form indicates "NO" to following the question: "Since you last renewed your license,
28 have you had any license disciplined by a government agency or other disciplinary body; or, have

1 you been convicted of any crime in any state, the USA and its territories, military court or a
2 foreign country."

3 PRAYER

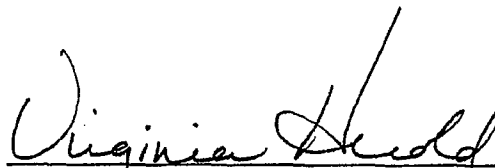
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 68987,
7 issued to Juan C. Briceno;

8 2. Ordering Juan C. Briceno to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

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14 DATED: 11/3/10


15 VIRGINIA K. HEROLD
16 Executive Officer
17 Board of Pharmacy
18 State of California
19 Complainant

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