

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3066

12 HECTOR ESQUIVEL
13 1700 N. Marengo
Pasadena, CA 91103

**DEFAULT DECISION
AND ORDER**

14 Pharmacy Technician Registration
15 No. TCH 16893

[Gov. Code, §11520]

16 Respondent.

17
18 FINDINGS OF FACT

19 1. On or about August 27, 2007, Complainant Virginia Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
21 Affairs, filed Accusation No. 3066 against Hector Esquivel (Respondent) before the Board.

22 2. On or about August 28, 1995, the Board issued Pharmacy Technician
23 Registration No. TCH 16893 to Respondent. The Pharmacy Technician Registration was in full
24 force and effect at all times relevant to the charges and allegations in Accusation No. 3066, and
25 will expire on October 31, 2008, unless renewed.

26 3. On or about September 5, 2007, Anna A. Carpenter, an employee of the
27 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
28 3066, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was and is 1700 N. Marengo, Pasadena, CA 91103. A copy of the Accusation, the related
3 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
4 reference.

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

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

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

12 6. Respondent failed to file a Notice of Defense within 15 days after service
13 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
14 Accusation No. 3066.

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

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

19 8. Pursuant to its authority under Government Code section 11520, the Board
20 finds Respondent is in default. The Board will take action without further hearing and, based on
21 the evidence before it, finds that the allegations in Accusation No. 3066 are true.

22 9. The total costs for investigation and enforcement are \$9,797.75 as of
23 October 3, 2007.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Hector Esquivel has
26 subjected his Pharmacy Technician Registration No. TCH 16893 to discipline.

27 2. A copy of the Accusation and the related documents and Declaration of
28 Service are attached.

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

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

4 a. Business and Professions Code (Code) sections 4300, 4301,
5 subdivision (l), and 490 of the Code, as defined in California Code of Regulations, title 16,
6 section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of
7 crimes substantially related to the qualifications, functions, or duties of a pharmacy technician as
8 follows:

9 i. One count of violating Title 21, United States Code, Sections 846,
10 841, subdivision (a)(1), and Title 18 United States Code, Section 2, subdivision (a), a felony
11 (conspiracy to aid and abet the manufacture of, possession with the intent to distribute, and
12 distribute, methamphetamine), as more fully discussed in paragraph 12 of Accusation No. 3066.

13 ii. One count of violating Penal Code section 241, subdivision (b), a
14 misdemeanor (assault on a peace officer), as more fully discussed in paragraph 12 of Accusation
15 No. 3066.

16 iii. One count of violating Vehicle Code section 14601.1, subdivision
17 (a), a misdemeanor (driving on a suspended license), as more fully discussed in paragraph 12 of
18 Accusation No. 3066.

19 b. Code sections 4300 and 4301, subdivision (f), on the grounds of
20 unprofessional conduct, in that Respondent committed acts of moral turpitude, dishonesty, and/or
21 corruption, in that Respondent was convicted of crimes of conspiring to aid and abet the
22 manufacture of, possession with the intent to distribute, and distribute, methamphetamine, and
23 the crime of assault on a police officer, as more fully discussed in paragraphs 12 and 13 of
24 Accusation No. 3066.

25 c. Code sections 4300 and 4301, subdivision (j), in conjunction with
26 Code section 4060, on the grounds of unprofessional conduct, in that Respondent violated the
27 statutes of this state, or any other state, or of the United States regulating controlled substances
28 and dangerous drugs, as more fully discussed in paragraphs 12 and 14 of Accusation No. 3066.

1 d. Code sections 4300 and 4301, subdivision (o), on the grounds of
2 unprofessional conduct, in that Respondent violated the Pharmacy Law [Code section 4000, et.
3 seq], as more fully discussed in paragraphs 12 through 15 of Accusation No. 3066.

4 LOCATION OF RECORD

5 The record upon which this Default Decision and Order are based is
6 located at the Sacramento headquarters of the Board.

7 ORDER

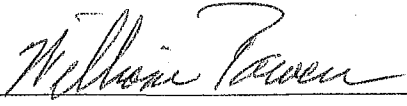
8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 16893,
9 heretofore issued to Respondent Hector Esquivel, is revoked.

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

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

16 It is so ORDERED November 20, 2007

17 BOARD OF PHARMACY
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA

20
21 By 
22 WILLIAM POWERS
23 Board President

22 60248286.wpd
23 DOJ docket number: LA2007600533

24 Attachments:

25 Exhibit A: Accusation No.3066, Related Documents, and Declaration of Service
26
27
28

Exhibit A

Accusation No. 3066,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3066

12 HECTOR ESQUIVEL

STATEMENT TO RESPONDENT

13 Respondent.

[Gov. Code §§ 11504, 11505(b)]

14
15 TO RESPONDENT:

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

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

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

26 **Scott J. Harris**
27 **Deputy Attorney General**
Ronald Reagan Building
28 **300 South Spring Street, Suite 1702**
Los Angeles, CA 90013

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

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

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

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

15 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
16 enclosed.

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

21 **NOTICE REGARDING STIPULATED SETTLEMENTS**

22 It may be possible to avoid the time, expense and uncertainties involved in an
23 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
24 settlement is a binding written agreement between you and the government regarding the matters
25 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
26 Board of Pharmacy but, once approved, it would be incorporated into a final order.

27 Any stipulation must be consistent with the Board's established disciplinary
28 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the

1 Board's Disciplinary Guidelines will be provided to you on your written request to the state
2 agency bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing,
4 or if you have any questions, you or your attorney should contact Deputy Attorney General Scott
5 J. Harris at the earliest opportunity.

6 DATED: 9/5/07


7 EDMUND G. BROWN JR., Attorney General
8 of the State of California

9 GLORIA A. BARRIOS
10 Supervising Deputy Attorney General

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SCOTT J. HARRIS
Deputy Attorney General

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3066

13 HECTOR ESQUIVEL
1700 N. Marengo
Pasadena, CA 91103

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 16893

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 28, 1995, the Board issued Pharmacy Technician
23 Registration No. TCH 16893 to Hector Esquivel (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2008, unless renewed.

26 \\\

27 \\\

28 \\\

JURISDICTION

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

5 4. Section 118, subdivision (b) states:

6 "The suspension, expiration, or forfeiture by operation of law of a license issued
7 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
8 by order of a court of law, or its surrender without the written consent of the board, shall not,
9 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
10 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
11 ground provided by law or to enter an order suspending or revoking the license or otherwise
12 taking disciplinary action against the licensee on any such ground."

13 5. Section 4300 of the Code provides, in pertinent part, that every license
14 issued by the Board is subject to discipline, including suspension or revocation.

15 6. Section 4301 of the Code states:

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

20

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

24

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

27

28 ///

1 "(l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
11 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
12 meaning of this provision. The board may take action when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under Section
15 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
16 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
17 or indictment.

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

23 7. Section 490 of the Code states:

24 "A board may suspend or revoke a license on the ground that the licensee has
25 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
26 duties of the business or profession for which the license was issued. A conviction within the
27 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
28 contendere. Any action which a board is permitted to take following the establishment of a

1 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
2 been affirmed on appeal, or when an order granting probation is made suspending the imposition
3 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
4 Penal Code.”

5 8. Section 4060 of the Code states:

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

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

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

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

27 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
28 request the administrative law judge to direct a licensee found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 CONTROLLED SUBSTANCES

4 11. "Methamphetamine" is a Scheduled II controlled substance, as defined by
5 Health and Safety Code section 11055(d)(2) and is categorized as a "dangerous drug" pursuant to
6 section 4022 of the Business and Professions Code.

7 FIRST CAUSE FOR DISCIPLINE

8 (Conviction of Substantially Related Crimes)

9 12. Respondent is subject to disciplinary action under sections 4300, 4301,
10 subdivision (l), and 490 of the Code, as defined in California Code of Regulations, title 16,
11 section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of
12 crimes substantially related to the qualifications, functions, or duties of a pharmacy technician, as
13 follows:

14 a. On or about October 10, 2000, Respondent was convicted by the Court on
15 a guilty plea of one count of violating Title 21, United States Code, Sections 846, 841,
16 subdivision (a)(1), and Title 18 United States Code, Section 2, subdivision (a), a felony
17 (conspiracy to aid and abet the manufacture of, possession with the intent to distribute, and
18 distribute, methamphetamine), in the United States District Court, Central District, State of
19 California, Case No. CR 99-322, entitled *The United States of America v. Jose Jesus Martinez, et*
20 *al.*

21 b. The circumstances surrounding the conviction are that beginning on a date
22 unknown and continuing to on or about March 18, 1999, Respondent and others, knowingly and
23 intentionally conspired and agreed with each other to aid and abet the manufacture of 500 grams
24 or more of a mixture or substance containing a detectable amount of methamphetamine, a
25 Schedule II controlled substance. In addition, Respondent and others conspired and agreed to
26 distribute more than 500 grams of a mixture or substance containing a detectable amount of
27 methamphetamine; and to possess, with the intent to distribute, more than 500 grams of a
28 mixture or substance containing a detectable amount of methamphetamine. In the course of the

1 commission of the crime, Respondent would deliver methamphetamine, attempt to obtain
2 chemicals used in the manufacture of methamphetamine, and collect narcotics proceeds. In or
3 about November 1998, Respondent and a co-conspirator drove from California to Wyoming to
4 deliver methamphetamine in exchange for \$58,860.00.

5 c. On or about March 19, 1998, Respondent was convicted by the Court on a
6 guilty plea for violating one count of Penal Code section 241, subdivision (b), a misdemeanor
7 (assault on a peace officer), in the Superior Court of California, County of Los Angeles,
8 Alhambra Judicial District, Case No. 8SA00707 entitled *The People of the State of California v.*
9 *Hector Esquivel*.

10 d. The circumstances surrounding the conviction are that on or about
11 February 16, 1998, Respondent, while at Acapulco's Restaurant, in Monrovia, California,
12 assaulted a police officer who was engaged in the performance of his or her duties following the
13 outbreak of an altercation at the restaurant between the Respondent and the manager and patrons
14 at the establishment.

15 e. On or about March 11, 1998, Respondent was convicted by the Court on a
16 plea of nolo contendere for violating one count of Vehicle Code section 14601.1, subdivision (a),
17 a misdemeanor (driving on a suspended license), in the Superior Court of California, County of
18 Los Angeles, Pasadena Judicial District, Case No. 93M02766 entitled *The People of the State of*
19 *California v. Hector Esquivel*.

20 SECOND CAUSE FOR DISCIPLINE

21 (Moral Turpitude, Dishonesty, Corruption)

22 13. Respondent is subject to disciplinary action under sections 4300 and
23 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed
24 acts of moral turpitude, dishonesty, and/or corruption, in that Respondent was convicted of
25 crimes of conspiring to aid and abet the manufacture of, possession with the intent to distribute,
26 and distribute, methamphetamine, and the crime of assault on a police officer, as more fully
27 discussed in paragraph 12, above.

28 \\\

1 THIRD CAUSE FOR DISCIPLINE

2 (Violation of Laws Regulating Controlled Substances)

3 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (j), in conjunction with Business and Professions Code section 4060, on the grounds
5 of unprofessional conduct, in that Respondent violated the statutes of this state, or any other
6 state, or of the United States regulating controlled substances and dangerous drugs, as more fully
7 discussed in paragraph 12, above.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Violation of Chapter)

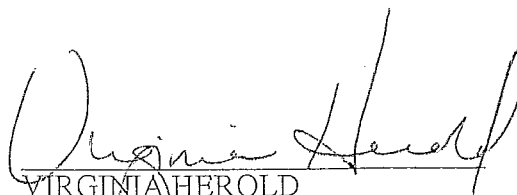
10 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated the
12 Pharmacy Law [Code section 4000, et. seq], as more fully discussed in paragraphs 12 through 14,
13 above.

14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH
18 16893, issued to Hector Esquivel;
- 19 2. Ordering Hector Esquivel to pay the Board the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 8/27/07

24 

25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 State of California
Complainant

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3066

12 HECTOR ESQUIVEL

REQUEST FOR DISCOVERY

13 Respondent.

[Gov. Code § 11507.6]

14
15 TO RESPONDENT:

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

20 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
21 ARE HEREBY REQUESTED TO:

- 22 1. Provide the names and addresses of witnesses to the extent known to the
23 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
- 24 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
25 the following in the possession or custody or under control of the Respondent:
 - 26 a. A statement of a person, other than the Respondent, named in the initial
27 administrative pleading, or in any additional pleading, when it is claimed that the act or
28 omission of the Respondent as to this person is the basis for the administrative

1 proceeding;

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

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

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

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

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

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

23 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
24 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
25 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
26 work product.

27 Your response to this Request for Discovery should be directed to the undersigned
28 attorney for the Complainant at the address on the first page of this Request for Discovery **within**

1 **30 days after service** of the Accusation.

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

5 DATED: 9/5/07

6 EDMUND G. BROWN JR., Attorney General
7 of the State of California

8 GLORIA A. BARRIOS
9 Supervising Deputy Attorney General

10 
11 _____
12 SCOTT J. HARRIS
13 Deputy Attorney General

14 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:

HECTOR ESQUIVEL

Respondent.

Case No. 3066

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 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:

Case No. 3066

HECTOR ESQUIVEL

NOTICE OF DEFENSE

Respondent.

[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 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.

**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)

In the Matter of the Accusation Against: **Hector Esquivel**
Case No.: 3066

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 September 5, 2007, I served the attached **Statement to Respondent, Accusation, Request for Discovery, Notice of Defense (In Duplicate), Government Code Sections 11507.5, 11507.6, 11507.7**, 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 **Statement to Respondent, Accusation, Request for Discovery, Notice of Defense (In Duplicate), Government Code Sections 11507.5, 11507.6, 11507.7**, 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 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Hector Esquivel
1700 N. Marengo
Pasadena, CA 91103
Cert. #7001 0360 0003 6741 6381

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 September 5, 2007, at Los Angeles, California.

Anna A. Carpenter
Declarant


Signature

cc: Kim deLong, Enforcement Analyst, Brd of Pharmacy

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

7001 0360 0003 6741 6381

OFFICIAL USE

Hector Esquivel

Cel 1700 N. Marengo

Return R (Endorsemen) Pasadena, CA 91103

Restricted D (Endorsemen) Cert. #7001 0360 0003 6741 6381

ACCUSATION PACKET

Total Postage & fees \$

Sent To

Street, Apt. No.;
or PO Box No.

City, State, ZIP+ 4