BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
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Telephone: (619) 645-2323
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **BENNY MARGARET CARVAJAL** aka B. Margaret Carvajal 4007 Darwin Avenue San Diego, CA 92154 Pharmacy Technician Reg. No. TCH 25588 Respondent.	Accusation No. 2861 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 23, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2861 against Benny Margaret Carvajal (Respondent) before the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On or about April 22, 1998, the Board issued Pharmacy Technician Registration No. TCH 25588 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 February 29, 2008, unless renewed.

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3. a. On or about January 25, 2006, M. Torres-Lopez, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2861, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board as of that date, which was 1375 Piedra Street, San Diego, CA 92154. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

b. On or about March 13, 2006, M. Torres-Lopez served by Certified and First Class Mail a copy of Accusation No. 2861, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 4007 Darwin Avenue, San Diego, CA 92154. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit B, and are incorporated herein by reference.

4. On or about January 30, 2006, Return Receipt No. 7160 3901 9848 8027 8067 was returned to the Office of the Attorney General, indicating that delivery of the documents referred to in paragraph 3(a), above, was made by the U.S. Postal Service. A copy of Return Receipt No. 7160 3901 9848 8027 8067 is attached hereto as Exhibit C, and is incorporated herein by reference.

5. On or about March 16, 2006, Return Receipt No. 7160 3901 9849 3220 2163 was returned to the Office of the Attorney General, indicating that delivery of the documents referred to in paragraph 3(b), above, was made by the U.S. Postal Service. A copy of Return Receipt No. 7160 3901 9849 3220 2163 is attached hereto as Exhibit D, and is incorporated herein by reference.

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

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

"(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."

8. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2861.

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

"(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."

10. Pursuant to its authority under Government Code section 11520, the Board of Pharmacy finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it contained in Exhibits A, B, C and D, finds that the allegations in Accusation No. 2861 are true.

11. The total costs for investigation and enforcement are $ 4,595.50 as of April 25, 2006, based on the Certification of Costs contained in Exhibit E.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Benny Margaret Carvajal has subjected her Pharmacy Technician Registration No. TCH 25588 to discipline.

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

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

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

a. Criminal Conviction of a Substantially Related Offense (Grand Theft), pursuant to Business and Professions Code sections 490, 4301(l) and Title 16, California Code of Regulations, section 1770 (First Cause for Discipline);

b. Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption, pursuant to Business and Professions Code section 4301(f) (Second Cause for Discipline);

c. Violation of Laws Regulating Controlled Substances and Dangerous Drugs, pursuant to Business and Professions Code section 4301(j) (Third Cause for Discipline); and,

d. Commission of Acts Which Would Have Warranted Denial of A License, pursuant to Business and Professions Code sections 480 and 4301(p) (Fourth Cause for Discipline).

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ORDER

IT IS SO ORDERED, that Pharmacy Technician Registration No. TCH 25588, heretofore issued to Respondent Benny Margaret Carvajal, 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 it 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 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

DOJ docket number:SD2005700380

Attachments:

Exhibit A:	Accusation No. 2861, Related Documents, and Declaration of Service 1/25/06
Exhibit B:	Accusation No. 2861, Related Documents, and Declaration of Service 3/13/06
Exhibit C:	Return Receipt No. 7160 3901 9848 8027 8067
Exhibit D:	Return Receipt No. 7160 3901 9849 3220 2163
Exhibit E:	Certification of Costs

Exhibit A

Accusation No. 2861 **(1/25/06)**
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
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P.O. Box 85266
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Attorneys for Complainant

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL 1375 Piedra Street San Diego, California 92154 Pharmacy Technician Reg. No. TCH 25588 Respondent.	Accusation No. 2861 OAH No. ACCUSATION

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about April 22, 1998, the Board of Pharmacy issued Original Pharmacy Technician Registration number TCH 25588 to B. Margaret Carvajal (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 4060 of the Code states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer."

6. Section 4301 of the Code states:

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

". . . .

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

". . . .

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

". . . .

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

". . . .

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective

of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

8. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

9. Penal Code section 487(a) states:

"Grand theft is theft committed in any of the following cases:

"(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($ 400), except as provided in subdivision (b)."

10. Health and Safety Code section 11173(a) states:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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11. California Code of Regulations, Title 16, section 1770, states:

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

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

13. **Drugs.**

Lortab is a Schedule III controlled substance under Health and Safety Code section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022(c), and is used in the relief of pain.

Criminal Conviction For Grand Theft of Controlled Substance - April 17, 2004

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Criminal Offense)

14. Respondent is subject to disciplinary action under section 490, 4301(l), and Title 16 of the California Code of Regulations, section 1770, in that Respondent has been convicted of a crime which is substantially related to the qualifications, functions and duties of a pharmacy assistant. The circumstances are as follows:

15. On or about April 17, 2004, in San Diego County Superior Court, Case No. CD177861, entitled *People v. Benny Margaret Carvajal*, Respondent was convicted by the court on her plea of guilty to Grand Theft, in violation of Penal Code section 487(a) (When value of property stolen exceeds $400.00), a misdemeanor.

16. On the basis of Respondent's plea described in paragraph 15, Respondent was placed on summary probation for 3 years on terms and conditions which included an order

that Respondent serve one day in custody (suspended), pay approximately $1300.00 in restitution to the victim and $400.00 in other fines, complete 52 hours of volunteer work and a shoplifting course, stay away from the victim, Pharmacare/Pro-Care pharmacy, and obey all laws.

17. The circumstances of the crime as charged are that between January 1, 2002 and March 10, 2003, Respondent unlawfully obtained and procured the administration of and prescription for a controlled substance, Lortab, by fraud, deceit, misrepresentation, subterfuge and by concealment of a material fact, from her employer, Pharmacare/Pro-Care pharmacy. A felony criminal complaint alleging violations of Health and Safety Code section 11173(a) (obtaining prescription by fraud/deceit) and Penal Code section 487(a) (grand theft of personal property) was filed against Respondent on October 7, 2003.

SECOND CAUSE FOR DISCIPLINE

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

18. Respondent is subject to disciplinary action under section 4301(f) on the grounds that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, based upon the facts and circumstances set forth in the First Cause for Discipline.

Diversion of Controlled Substance - January, 2002 through March, 2003

THIRD CAUSE FOR DISCIPLINE

(Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

19. Respondent is subject to disciplinary action under section 4301(j), on the grounds that she violated laws regulating controlled substances and dangerous drugs. The circumstances are as follows: From approximately January, 2002 to March, 2003, while working as a pharmacy technician at Pro-Care pharmacy, Respondent diverted approximately 2300 tablets of Lortab, a schedule III narcotic, from the pharmacy without authorization, in violation of section 4060 and Health and Safety Code section 11173(a). One incident of Respondent's diversion was caught on the pharmacy's surveillance camera. Respondent admitted taking approximately 200 Lortab tablets a week at random from the pharmacy during her employment, by concealing 100 count Lortab bottles in her clothes.

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FOURTH CAUSE FOR DISCIPLINE

(Commission of Acts Which Would Have Warranted Denial of a License)

20. Respondent is subject to disciplinary action under section 480 and 4301(p), on the grounds that she has engaged in actions or conduct that would have warranted denial of a license, based on the fact and circumstances set forth in the First, Second and Third Causes for Discipline.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration number TCH 25588, issued to Benny Margaret Carvajal;

2. Ordering Benny Margaret Carvajal to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 1/23/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2005700380

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Attorneys for Complainant

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **REQUEST FOR DISCOVERY** [Gov. Code § 11507.6]

TO RESPONDENT:

Under section 11507.6 of the Government Code of the State of California, parties to an administrative hearing, including the Complainant, are entitled to certain information concerning t opposing party's case. A copy of the provisions of section 11507.6 of the Government Code concerning such rights is included among the papers served.

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

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:

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 persons;

c. Statements of witnesses then proposed to be called by the Respondent 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 Respondent now proposes to offer in evidence;

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

f. Investigative reports made by or on behalf of the Respondent 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 Request for Discovery, "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.

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

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

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

DATED: Jan. 25, 2006

BILL LOCKYER, Attorney General
of the State of California

T. MICHELLE LAIRD
Deputy Attorney General

Attorneys for Complainant

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BILL LOCKYER, Attorney General
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

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

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

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

T. Michelle Laird
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

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

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

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

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

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, California 92101, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

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

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

NOTICE REGARDING STIPULATED SETTLEMENTS

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

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

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

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General T. Michelle Laird at the earliest opportunity.

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **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.

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **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.

80061673.wpd

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 BENNY MARGARET CARVAJAL**

Accusation No.: 2861

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 January 25, 2006, I served the attached **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, AND 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 **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, AND 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 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

BENNY MARGARET CARVAJAL
1375 Piedra Street
San Diego, CA 92154

Certified Article Number

7160 3901 9848 8027 8067

SENDERS RECORD

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 January 25, 2006, at San Diego, California.

M. Torres-Lopez
Declarant

M. Torres-Lopez
Signature

80061692.wpd

Exhibit B

Accusation No. 2861 (3/13/06)
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266

Telephone: (619) 645-2323
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **BENNY MARGARET CARVAJAL** aka B. MARGARET CARVAJAL 4007 Darwin Avenue San Diego, CA 92154 Pharmacy Technician Reg. No. TCH 25588 Respondent.	Accusation No. 2861 OAH No. ACCUSATION

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about April 22, 1998, the Board of Pharmacy issued Original Pharmacy Technician Registration number TCH 25588 to B. Margaret Carvajal (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 4060 of the Code states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer."

6. Section 4301 of the Code states:

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

". . . .

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

". . . .

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

". . . .

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

". . . .

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective

of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

8. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

9. Penal Code section 487(a) states:

"Grand theft is theft committed in any of the following cases:

"(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($ 400), except as provided in subdivision (b)."

10. Health and Safety Code section 11173(a) states:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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11. California Code of Regulations, Title 16, section 1770, states:

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

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

13. **Drugs.**

Lortab is a Schedule III controlled substance under Health and Safety Code section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022(c), and is used in the relief of pain.

Criminal Conviction For Grand Theft of Controlled Substance - April 17, 2004

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Criminal Offense)

14. Respondent is subject to disciplinary action under section 490, 4301(l), and Title 16 of the California Code of Regulations, section 1770, in that Respondent has been convicted of a crime which is substantially related to the qualifications, functions and duties of a pharmacy assistant. The circumstances are as follows:

15. On or about April 17, 2004, in San Diego County Superior Court, Case No. CD177861, entitled *People v. Benny Margaret Carvajal*, Respondent was convicted by the court on her plea of guilty to Grand Theft, in violation of Penal Code section 487(a) (When value of property stolen exceeds $400.00), a misdemeanor.

16. On the basis of Respondent's plea described in paragraph 15, Respondent was placed on summary probation for 3 years on terms and conditions which included an order

that Respondent serve one day in custody (suspended), pay approximately $1300.00 in restitution to the victim and $400.00 in other fines, complete 52 hours of volunteer work and a shoplifting course, stay away from the victim, Pharmacare/Pro-Care pharmacy, and obey all laws.

17. The circumstances of the crime as charged are that between January 1, 2002 and March 10, 2003, Respondent unlawfully obtained and procured the administration of and prescription for a controlled substance, Lortab, by fraud, deceit, misrepresentation, subterfuge and by concealment of a material fact, from her employer, Pharmacare/Pro-Care pharmacy. A felony criminal complaint alleging violations of Health and Safety Code section 11173(a) (obtaining prescription by fraud/deceit) and Penal Code section 487(a) (grand theft of personal property) was filed against Respondent on October 7, 2003.

SECOND CAUSE FOR DISCIPLINE

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

18. Respondent is subject to disciplinary action under section 4301(f) on the grounds that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, based upon the facts and circumstances set forth in the First Cause for Discipline.

Diversion of Controlled Substance - January, 2002 through March, 2003

THIRD CAUSE FOR DISCIPLINE

(Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

19. Respondent is subject to disciplinary action under section 4301(j), on the grounds that she violated laws regulating controlled substances and dangerous drugs. The circumstances are as follows: From approximately January, 2002 to March, 2003, while working as a pharmacy technician at Pro-Care pharmacy, Respondent diverted approximately 2300 tablets of Lortab, a schedule III narcotic, from the pharmacy without authorization, in violation of section 4060 and Health and Safety Code section 11173(a). One incident of Respondent's diversion was caught on the pharmacy's surveillance camera. Respondent admitted taking approximately 200 Lortab tablets a week at random from the pharmacy during her employment, by concealing 100 count Lortab bottles in her clothes.

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FOURTH CAUSE FOR DISCIPLINE

(Commission of Acts Which Would Have Warranted Denial of a License)

20. Respondent is subject to disciplinary action under section 480 and 4301(p), on the grounds that she has engaged in actions or conduct that would have warranted denial of a license, based on the fact and circumstances set forth in the First, Second and Third Causes for Discipline.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration number TCH 25588, issued to Benny Margaret Carvajal;

2. Ordering Benny Margaret Carvajal to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 1/23/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2005700380

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BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2323
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

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

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

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

T. Michelle Laird
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

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

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

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

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

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, California 92101, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

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

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

NOTICE REGARDING STIPULATED SETTLEMENTS

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

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

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

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General T. Michelle Laird at the earliest opportunity.

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BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2323
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **REQUEST FOR DISCOVERY** [Gov. Code § 11507.6]

TO RESPONDENT:

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

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

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:

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 persons;

c. Statements of witnesses then proposed to be called by the Respondent 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 Respondent now proposes to offer in evidence;

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

f. Investigative reports made by or on behalf of the Respondent 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 Request for Discovery, "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.

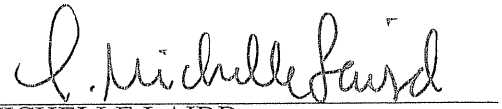
YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

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

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

DATED: 3/13/06

BILL LOCKYER, Attorney General
of the State of California



T. MICHELLE LAIRD
Deputy Attorney General

Attorneys for Complainant

80061673.wpd

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

In the Matter of the Accusation Against: BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL Respondent.	Accusation No. 2861 **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.

80061673.wpd

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

In the Matter of the Accusation Against:	Accusation No. 2861
BENNY MARGARET CARVAJAL aka B. MARGARET CARVAJAL	**NOTICE OF DEFENSE**
	[Gov. Code §§ 11505 and 11506]
Respondent.	

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.

80061673.wpd

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.

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DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against BENNY MARGARET CARVAJAL**

Accusation No.: 2861

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 March 13, 2006, I served the attached **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, AND 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 **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, AND 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 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

B. MARGARET CARVAJAL
4007 Darwin Avenue
San Diego, CA 92154

Respondent in Pro Per

Certified Article Number
7160 3901 9849 3220 2163
SENDERS RECORD

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 March 13, 2006, at San Diego, California.

M. Torres-Lopez
Declarant

Marianna Torres Lopez
Signature

80066663.wpd

Exhibit C

Return Receipt No. 7160 3901 9848 8027 8067

2. Article Number

7160 3901 9848 8027 8067

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery 1-27

C. Signature

X Bianca F.

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

1st Ave

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

BENNY MARGARET CARVAJAL
1375 Piedra Street
San Diego, CA 92154

SD200570
T. Michelle

PS Form 3811, July 2001 Domestic Return Receipt

UNITED STATES POSTAL SERVICE

SAN DIEGO CA 92

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

● PRINT YOUR NAME, ADDRESS AND ZIP CODE BELOW ●

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
PO BOX 85266
SAN DIEGO CA 92186-9961

ATTORNEY GENERAL

2006 JAN 30

Exhibit D

Return Receipt No. 7160 3901 9849 3220 2163

2. Article Number

7160 3901 9849 3220 2163

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

BENNY MARGARET CARVAJAL
4007 Darwin Avenue
San Diego, CA 92154

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X Veronica Lucas

☐ Agent
☐ Addressee

D. Is delivery address different from Item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

2nd Rec.

2006 MAR 16 AM 8:31

ATTORNEY GEN

SD2005700380
Michelle Laird

PS Form 3811, January 2005 Domestic Return Receipt

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

SAN DIEGO CA 92

● PRINT YOUR NAME, ADDRESS, AND ZIP CODE BELOW ●

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
PO BOX 85266
SAN DIEGO CA 92186-9961

Exhibit E

Certification of Costs

BILL LOCKYER, Attorney General
of the State of California
T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2323
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **BENNY MARGARET CARVAJAL** aka B. Margaret Carvajal Respondent.	Accusation No. 2861 **CERTIFICATION OF COSTS: DECLARATION OF T. MICHELLE LAIRD** [Business and Professions Code section 125.3]

I, T. MICHELLE LAIRD, hereby declare and certify as follows:

1. I am a Deputy Attorney General employed by the California Department of Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in the Civil Division of the Office. I have been designated as the representative to certify the costs of prosecution by DOJ in this case. I make this certification in my official capacity and as an officer of the court.

2. I represent the Complainant, Patricia F. Harris, Executive Officer of the Board of Pharmacy, in this action. I was assigned to handle this case on or around April 1, 2005.

3. As the Deputy Attorney General assigned to handle this case, I performed a wide variety of tasks that were necessary for the prosecution of this matter, including, but not

limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material; (3) drafting pleadings, correspondence, memoranda, and other case-related documents; (4) researching relevant points of law and fact; (5) consulting and/or meeting with colleague deputies, supervisory staff, experts, client staff, and investigators; (6) service of Respondent; and, (7) Requesting discovery.

4. I am personally familiar with the time recording and billing practices of DOJ and the procedure for charging the client agency for the reasonable and necessary work performed on a particular case. Whenever work is performed on a case, it is the duty of the employee to keep track of the time spent and to report that time on DOJ time sheets at or near the time of the tasks performed. Based upon the time reported through April 25, 2006, DOJ has billed or will bill the Board for the following amount of time spent working on the above entitled case.

Employee/ Position	Fiscal Year	No. of Hours	Hourly Rate	Total Charges
T. Michelle Laird Deputy Attorney General	2004-2005	0.50	139	69.50
T. Michelle Laird Deputy Attorney General	2005-2006	31.00	146	4,526.00
			TOTAL:	$4,595.50

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

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

Executed on 4/26/06, in the City of San Diego, California.

T. Michelle Laird

T. MICHELLE LAIRD
Deputy Attorney General

Declarant

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SD2005700380