BILL LOCKYER, Attorney General
of the State of California
LORRIE M. YOST, State Bar No. 119088
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-2271
Facsimile: (916) 327-8643

Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: JENNIFER WEST-LACKEY 131 Cohn Valley Way Folsom, CA 95630 Original Pharmacist No. RPH 41647 Respondent.	Case No. 2867 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 5, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 2867 against Jennifer West-Lackey (Respondent) before the Board of Pharmacy.

2. On or about April 23, 1988, the Board of Pharmacy (Board) issued Original Pharmacist No. RPH 41647 to Respondent. The Original Pharmacist was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

3. On or about July 8, 2005, Jessica L. Taylor, an employee of the Department of Justice, served by Certified Mail a copy of the Petition to Revoke Probation No. 2867, 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 131 Cohn Valley Way, Folsom, CA 95630. A copy of the Petition to Revoke Probation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

4. Service of the Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about July 25, 2005, a green Domestic Return Receipt card, Article number 7160 3901 9848 9138 8281, signed by "Jennifer Lackey" was received by the Office of the Attorney General. A copy of the postal returned documents are attached hereto as Exhibit B, and are incorporated herein by reference.

6. 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."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the merits of Petition to Revoke Probation No. 2867.

8. 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."

9. Pursuant to its authority under Government Code section 11520, the Board 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 and C, finds that the allegations in Petition to Revoke Probation No. 2867 are true.

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10. The total costs for investigation and enforcement are $2,259.50 as of September 16, 2005. A Certification of Costs is attached as Exhibit C, and incorporated herein by reference.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jennifer West-Lackey has subjected her Original Pharmacist No. RPH 41647 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation and the related documents and Declaration of Service are attached.

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

4. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacist based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

a. During the month of July, 2004, Respondent violated Business and Professions section 4301, subdivision (h), on the grounds of unprofessional conduct, in that she used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, other persons

b. During the year of 2004, Respondent violated Business and Professions section 4301, subdivision (f), on the grounds of unprofessional conduct, in that during her participation in the Pharmacists Recovery Program (PRP), ordered by the Board as a part of her probation, she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption in that she lied during a mental health examination, lied to her health support group, and falsely documented attendance at various recovery groups.

c. During the year of 2004, Respondent violated Condition 1(A) of her probation by failing to obey state laws substantially related to or governing the practice of pharmacy, by violating Business and Professions Code section 4301, subdivisions (f) and (h), as set forth in paragraphs 4(a) and 4(b) above.

///

d. On or about February 15, 2005, Respondent violated Condition 1(Q) of her probation by failing to successfully participate in and complete her treatment contract in that the Maximus Diversion Program (MDP) terminated Respondent from the Pharmacists Recovery Program (PRP).

e. On or about November 29, 2004, Respondent violated Condition 1(R) of her probation in that she failed to submit to a random body fluid test.

f. During the month of July 2004, Respondent violated Condition 1(S) of her probation in that she failed to completely abstain from the possession or use of alcohol.

ORDER

IT IS SO ORDERED that Original Pharmacist No. RPH 41647, heretofore issued to Respondent Jennifer West-Lackey, is revoked.

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

This Decision shall become effective on December 23, 2005.

It is so ORDERED November 23, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

West-Lackey.def.dec.10198374.wpd
DOJ docket number:SA2005102405

Attachments:

Exhibit A: Petition to Revoke Probation No.2867, Related Documents, and Declaration of Service
Exhibit B: Domestic Return Receipt # 7160 3901 9848 9138 8281
Exhibit C: Certification of Costs

Exhibit A

Petition to Revoke Probation No. 2867,
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
LORRIE M. YOST, State Bar No. 119088
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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 and Petition to Revoke Probation Against: **JENNIFER JEAN WEST-LACKEY** 131 Cohn Valley Way Folsom, CA 95630 Pharmacist License No. RPH 41647 Respondent.	Case No. 2867 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about April 23, 1988, the Board issued Pharmacist License Number RPH 41647 to Jennifer Jean West-Lackey ("Respondent"). On April 3, 2003, pursuant to the Stipulation, Decision and Order adopted by the Board as its Decision in the disciplinary action titled *In the Matter of the Accusation Against: Jennifer West-Lackey, etc.*, Case Number 2459, the Board ordered that Respondent's pharmacist license be revoked effective May 2, 2003. The revocation was stayed and Respondent was placed on probation for five (5) years on terms and

conditions, as more particularly set forth in paragraphs 11 through 23 below. Respondent's pharmacist license will expire on February 28, 2006, unless renewed.

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

4. Code section 118, subdivision (b), states:

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

5. Code section 4301 states, in pertinent part:

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.

. . . .

///

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license . . .

Cost Recovery

6. Code section 125.3 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.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Using Alcoholic Beverages in a Dangerous or Injurious Manner)

7. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that she used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, other persons, and/or the public as follows:

Respondent, by her own admission, drank alcohol 3 to 4 times per week for at least one (1) month before testing positive on July 30, 2004, for ethylglucuronide (alcohol) during a urine toxicology screening. Respondent admitted that she would drink when she was alone and when her husband was away on business and that she would drink an entire magnum of wine at a time to the point where she would "pass out."

SECOND CAUSE FOR DISCIPLINE

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

8. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that during her participation in the Pharmacists Recovery Program (PRP), ordered by the Board as a part of her probation, she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as follows:

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a. During a mental health examination on August 11, 2004 designed to determine Respondent's fitness to practice, Respondent denied that she had been using alcohol prior to the urine toxicology screening of July 30, 2004. In fact, Respondent had been drinking alcohol 3 to 4 times per week for approximately one (1) month prior to the toxicology screening and drank an entire magnum of wine on each occasion, to the point where she would "pass out", as set forth in paragraph 7 above. Respondent's dishonesty rendered the assessment invalid.

b. During Respondent's participation in the PRP health support group, Respondent told lies to the group, including about her sobriety date, rendering the group process ineffective and the progress reports from the group's leader inaccurate.

c. Respondent admitted that she had falsely documented attendance at various recovery groups.

PETITION TO REVOKE PROBATION

9. Complainant realleges and incorporates herein by reference as if fully set forth the allegations contained in paragraphs 1 through 8 of the Accusation.

10. Condition 2 of Respondent's probation states, in pertinent part, that if Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed (revocation).

11. On May 20, 2003, Respondent signed a Declaration acknowledging that she thoroughly understood the terms and conditions of her probation as set forth in the disciplinary action (Stipulation, Decision and Order), and that failure to comply may result in further disciplinary action.

12. Grounds exist to revoke Respondent's probation and reimpose the order of revocation of her pharmacist license in that she has violated the terms and conditions of her probation, as follows:

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all State Laws)

13. Condition 1(A) of Respondent's probation states, in pertinent part, that Respondent shall obey all federal and state laws and regulations substantially related to or governing the practice of pharmacy.

14. Respondent's probation is subject to revocation in that she failed to obey all state laws substantially related to or governing the practice of pharmacy, by and through her violations of Code section 4301, subdivisions (f) and (h), as set forth in paragraphs 7 through 8 above.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Successfully Participate in and Complete Pharmacists Recovery Program)

15. Condition 1(Q) of Respondent's probation states, in pertinent part, that Respondent shall successfully participate in and complete the Pharmacists Recovery Program ("PRP") for evaluation and treatment.

16. Respondent's probation is subject to revocation in that she failed to successfully participate in and complete the treatment contract with PRP. On February 15, 2005, the Maximus Diversion Program (MDP) terminated Respondent from the PRP. Respondent was terminated for failing to comply with the terms and conditions of her recovery contract in the following respects:

a. Respondent tested positive for ethylglucuronide (alcohol) on July 30, 2004, during a urine toxicology screening.

b. Respondent failed to submit to a random body fluid test on November 29, 2004, as required by her recovery contract with (MDP).

c. Respondent was in non-compliance with her recovery contract in that she was terminated from the Kaiser CDRP outpatient program because she failed to attend three scheduled individual therapy sessions.

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d. Respondent rendered her mental health exam/reassessment on August 11, 2004 invalid by lying to her doctor about her sobriety date, her treatment progress and the scope and pattern of her substance use/abuse. Respondent failed to appropriately engage in the reassessment process thereby rendering the assessment invalid.

e. Respondent continually misrepresented her sobriety date and failed to engage in the therapeutic process during the health support group meetings facilitated by Craig Johnson.

f. Respondent failed to submit her 12-step attendance cards on time for the months of November 2004, March 2004, and April 2004.

g. Respondent failed to attend individual therapy as requested by the PRP on January 6, 2005.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Participate in Random Drug Screening)

17. Condition 1(R) of Respondent's probation states, in pertinent part, that Respondent shall participate in random testing, including, but not limited to, biological fluid testing (e.g., urine, blood), Breathalyzer, hair follicle testing, or a drug screening program approved by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

18. Respondent's probation is subject to revocation in that she failed to submit to a random body fluid test on November 29, 2004, as required by her recovery contract with PRP, as set forth in paragraph 16(b) above.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Abstain from Alcohol Use)

19. Condition 1(S) of Respondent's probation states, in pertinent part, that Respondent shall completely abstain from the possession or use of alcohol.

20. Respondent's probation is subject to revocation in that she failed to completely abstain from the use of alcohol, as set forth in paragraphs 7, 8, and 18 above.

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 Pharmacist License Number RPH 41647, issued to Jennifer Jean West-Lackey;

2. Revoking probation and reimposing the order of revocation of Pharmacist License Number RPH 41647, issued to Jennifer Jean West-Lackey;

3. Ordering Jennifer Jean West-Lackey 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;

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

DATED: 7/5/05

P. F. Harris

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

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Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: JENNIFER WEST-LACKEY Respondent.	Case No. 2867 **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.

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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 **within 30 days after service** of the Petition to Revoke Probation.

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: 7-8-05

BILL LOCKYER, Attorney General
of the State of California

Lorrie Yost

LORRIE M. YOST
Deputy Attorney General

Attorneys for Complainant

10179909.wpd

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Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: JENNIFER WEST-LACKEY Respondent.	Case No. 2867 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Petition to Revoke Probation 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 Lorrie M. Yost, within fifteen (15) days after a copy of the Petition to Revoke Probation 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 Petition to Revoke Probation 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:

Lorrie M. Yost
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, California 94244-2550.

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 Petition to Revoke Probation, but you will not be permitted to raise any objection to the form of the Petition to Revoke Probation 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 Petition to Revoke Probation on you.

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

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 560 J Street, Suite 340/360, Sacramento, California 95814, 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 Lorrie M. Yost 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 Petition to Revoke Probation Against: JENNIFER WEST-LACKEY Respondent.	Case No. 2867 **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 Petition to Revoke Probation; 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 Petition to Revoke Probation.

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 Petition to Revoke Probation 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.

10179909.wpd

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

In the Matter of the Petition to Revoke Probation Against: JENNIFER WEST-LACKEY Respondent.	Case No. 2867 **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 Petition to Revoke Probation; 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 Petition to Revoke Probation.

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 Petition to Revoke Probation 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.

10179909.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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10179909.wpd

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

Case Name: **In the Matter of the Petition to Revoke Probation Against: Jennifer West-Lakey**

No.: **2867**

I declare:

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

On July 8, 2005, I served the attached **Accusation and Petition to Revoke Probation, Request for Discovery, Statement to Respondent, Notice of Defense and Government Code Sections 11504 & 11505;** 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 and Petition to Revoke Probation, Request for Discovery, Statement to Respondent, Notice of Defense and Government Code Sections 11504 & 11505** 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 Sacramento addressed as follows

Jennifer West-Lackey
131 Cohn Valley Way
Folsom, CA 95630
Respondent
Mail Cert #7160 3901 9848 9138 8281

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2005, at Sacramento, California.

Jessica L. Taylor	
Declarant	Signature

cc: Patricia Harris, Bd. of Pharmacy

10179914.wpd

Exhibit B

Domestic Return Receipt Card # 7160 3901 9848 9138 8281

7160 3901 9848 9138 8281

TO: Jennifer West-Lackey
131 Cohn Valley Way
Folsom, CA 95630

SENDER: Lorrie Yost

REFERENCE: SA2005102405

PS Form 3800, June 2000

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

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

2. Article Number

7160 3901 9848 9138 8281

3. Service Type **CERTIFIED MAIL**

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

1. Article Addressed to:

Jennifer West-Lackey
131 Cohn Valley Way
Folsom, CA 95630

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Jennifer Lackey

B. Date of Delivery 7/22/05

C. Signature

X Jennifer Lackey ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SA2005102405/ Acc. Pkt. Lorrie Yost

PS Form 3811, July 2001 Domestic Return Receipt

Exhibit C

Certification of Costs

California State Board of Pharmacy
400 R Street, Suite 4070, Sacramento, CA 95814
Phone (916) 445-5014
Fax (916) 327-6308
www.pharmacy.ca.gov

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

CERTIFICATION OF COSTS OF INVESTIGATIVE AND PROSECUTION BY AGENCY EXECUTIVE OFFICER

I, Patricia Harris, declare that I am the Executive Officer of the Board of Pharmacy, and in that capacity certify pursuant to the provisions of the Business and Professions Code Sections 4350 and 4359, that I filed Accusation and Petition to Revoke Probation Number **2867** against **Jennifer West-Lackey**, who holds the pharmacist license number **RPH 41647**.

CERTIFICATION OF COSTS INCURRED THROUGH THE FILING OF THE ACCUSATION

In my capacity as the Executive Officer, I review and approve payment for costs incurred by the Board of Pharmacy in the enforcement of the laws and regulations under its jurisdiction. I have reviewed the records of the agency and these reflect that the following costs and fees have been incurred by the agency in connection with the investigation and prosecution of Accusation Number **2867** as of the filing of the Accusation and Petition to Revoke Probation on **July 5, 2005.**

1. Legal Analyst's costs for **6.5** hours at **$91.00** per hour	**$ 591.50**
3. Attorney General's costs for **12** hours at **$139.00** per hour	**$ 1,668.00**

Total costs incurred through the filing of the Accusation: **$ 2,259.50**

CERTIFICATION OF COSTS INCURRED AFTER FILING ACCUSATION

Subsequent to filing the Accusation, the agency incurred the following additional costs in the investigation and prosecution of Accusation Number **2867** up to the commencement of the hearing of the matter before the Office of Administrative Hearings.

1. Attorney General's costs for **.75** hours at **$146.00** per hour **$ 109.50**

Total costs incurred from filing of Accusation to date: **$ 109.50**

The total of the costs and fees paid and incurred by the agency in the investigation and prosecution of Case Number **2867** from commencement of the investigation through **July 31, 2005**, in the sum of:

$ 2,369.00

CERTIFICATION

I certify pursuant to the provisions of Section 125.3 of the Business and Professions Code of the State of California that, to the best of my knowledge, the foregoing statement of costs incurred by the Board of Pharmacy is true and correct and that the amounts set forth therein do not exceed the actual and reasonable costs of investigation and prosecution in Case Number **2867.**

Dated: September 16, 2005

P. F. Harris

Patricia F. Harris
Executive Officer