BILL LOCKYER, Attorney General
of the State of California
JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
California Department of Justice
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P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-7376
Facsimile: (916) 327-8643

Attorneys for Complainant

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

In the Matter of the Accusation Against: **NIKKI LYNN MCKEON** 4709 Claremont Ave Stockton, CA 95207 Pharmacy Technician Registration TCH 49265 Respondent.	Case No. 2961 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 24, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2961 against Nikki Lynn McKeon ("Respondent") before the Board of Pharmacy.

2. On or about June 20, 2003, the Board of Pharmacy issued Registration No. TCH 49265 to Nikki Lynn McKeon (aka Nikki deWeese). The Pharmacy Technician Registration No. TCH 49265 will expire on November 30, 2006.

3. On or about May 1, 2006, Jessica L. Taylor, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2961, Statement to Respondent, Notice of Defense, and Request for Discovery to Respondent's address of record with the Board, which was and is 4709 Claremont Ave, Stockton, CA 95204.

A copy of the Accusation, the related documents, and Declaration of Service are attached as **Exhibit A**, and are incorporated herein by reference.

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

5. The First Class pleading packet sent on May 1, 2006, to the 4709 Claremont Ave, Stockton, CA 95204 address was returned, with the following notification from the U.S. Postal Service:

> "Unable to Forward
> No Forward Order On File
> Return To Postmaster
> Of Addressee For Review"

The Certified mail (No. 7160 3901 9848 9138 1954) sent the same day to the same address was returned by the U.S. Postal Service marked with the same notification as set forth above. 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 Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2961.

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.

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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 and B finds that the allegations in Accusation No. 2961 are true.

10. The total costs for investigation and enforcement are $1,241.00 as of August 12, 2006.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Nikki Lynn McKeon has subjected her Pharmacy Technician's Registration No. TCH 49265 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.

4. The Board of Pharmacy, Department of Consumer Affairs is authorized to revoke Respondent's technician's registration No. TCH 49265 based upon violations of Business and Professions Code section 4301(f) (obtaining controlled substance through fraud, deceit, subterfuge), section 4301(j) (violation of state statutes), section 4301(q) (subverting an investigation), section 4301(o) (violation of laws and regulations), as alleged in Accusation No. 2961.

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ORDER

IT IS SO ORDERED that Pharmacy Technician's Registration No. TCH 49265 heretofore issued to Nikki Lynn McKeon, 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 October 19, 2006.

It is so ORDERED September 19, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

WILLIAM POWERS
Board President

Attachments:

Exhibit A: Accusation No. 2961, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

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Exhibit A

Accusation No. 2961,
Related Documents and Declaration of Service

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of the State of California
JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
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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: **NIKKI LYNN MCKEON** 4709 Claremont Ave Stockton, CA 95207 Pharmacy Technician Registration TCH 49265 Respondent.	Case No. 2961 **ACCUSATION**

Complainant alleges:

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

I.

LICENSE HISTORY

2. On June 20, 2003, the Board issued Original Pharmacy Technician Registration No. TCH 49265 to Nikki Lynn McKeon (aka Nikki deWeese), to act as a pharmacy technician in California. Ms. McKeon's pharmacy technician's registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2006, unless renewed.

II.

STATUTORY PROVISIONS

3. Under Business and Professions Code ("Bus. & Prof. Code") section 4300 the Board may discipline any license, for any reason provided in the Pharmacy Law, (i.e., Bus. & Prof. Code section 4000 et. seq.)

4. Bus. & Prof. Code section 4301 states, in pertinent part:

> **§ 4301. Unprofessional conduct; licenses procured through misrepresentation, fraud, or mistake**
>
> 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.
>
> . . . .
>
> (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.
>
> . . .
>
> (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

5. Bus. & Prof. Code section 4059.5(a) states as follows:

> **§ 4059.5. Dangerous drugs and devices; license necessary to order; transfer, sale or delivery; deliveries to hospitals and pharmacies**
>
> (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by a pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to

operate through an exemptee, the exemptee may sign for and receive the delivery.

6. Bus. & Prof. Code section 4060 states as follows:

§ 4060. Controlled substances; possession

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

. . .

7. Health and Safety Code section 11173(a), states as follows:

§ 11173. Fraud, deceit, misrepresentations

(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.

8. Health and Safety Code section 11209(a), states as follows:

§ 11209. Delivery of Schedule II, III, or IV controlled substances; signing and retaining receipts; reports of discrepancies

(a) No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substance received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy.

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9. Health and Safety Code section 11350, in pertinent part, as follows:

§ 11350. Possession of designated controlled substances; punishment and fine

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c0, or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or (2) any controlled substances classified in Schedule III, IV, or V which, is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

. . .

10. Health and Safety Code section 11352(a), states as follows:

§ 11352. Transportation, sale, giving away, etc., of designated controlled substances; punishment

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers, to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11056, or (2) any controlled substances classified in Schedule III, IV, or V which, is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison for three, four, or five years.

11. Bus. & Prof. 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.

12. Bus. & Prof. 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.

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III.

CONTROLLED SUBSTANCES AT ISSUE

13. "Lortab", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

14. "Lorcet", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

15. "Norco", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4)

16. "Vicodin", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B&PC 4022	CONTROLLED SUBSTANCE PER H&S CODE	INDICATIONS FOR USE
Lortab	Hydrocodone/APAP 7.5 or 10mg /500mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Lorcet 10mg	Hydrocodone/APAP 10mg/650mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Norco	Hydrocodone/APAP 10mg/325mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Vicodin Vicodin ES	Hydrocodone/APAP 5/500 or 7.5/750mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain

IV.

GENERAL BACKGROUND

17. From May 5, 2003, through February 10, 2005, Respondent worked as a pharmacy technician at Rio Linda Drug. While working as a pharmacy technician, she placed drug orders, received drug orders, signed Proof of Delivery forms and filed these invoices. These drugs included controlled substances.

18. From January 2, 2004, through February 10, 2005, Respondent, while working at Rio Linda Drug dishonestly, fraudulently and deceitfully obtained approximately 378,558 doses of hydrocodone with acetaminophen 10/325 tablets, 49,634 doses of hydrocodone with acetaminophen 7.5/750 tablets, 24,726 doses of hydrocodone with acetaminophen 5/500

tablets, 6,470 doses of hydrocodone with acetaminophen 10/500 tablets, 3,600 doses of hydrocodone with acetaminophen 7.5/500 tablets, and 1,000 doses of hydrocodone with acetaminophen 10/650 tablets, by diverting Rio Linda Drug's inventory.

19. *(Signing for delivery of dangerous drugs)* From January 2, 2004, through February 10, 2005, Respondent, while working at Rio Linda Drug, signed hundreds of proof of delivery forms for dangerous drugs, which legally must only be performed by a pharmacist.

20. (*Failure to maintain invoices*) Respondent failed to maintain 62 Cardinal Health invoices, 11 Valley Wholesale invoices, and 1 Qualitest invoice for hydrocodone with acetaminophen acquisitions.

21. (*Subverting investigation*) On June 9, 2005, and June 16, 2005, Respondent did not appear at scheduled appointments with the Board investigator regarding investigation of her Rio Linda Drug employment. The Board investigator left several phone messages with Respondent requesting her to call back. Respondent did not return these calls.

V.

VIOLATIONS

(B&P SECTION 4301(f)

(Obtaining controlled substance through fraud, deceit, subterfuge)

22. Paragraphs 17 through 21 are incorporated herein by reference. Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in obtaining controlled substances through fraud, deceit and subterfuge. More specifically, Respondent McKeon fraudulently obtained 463,000 doses of hydrocodone with acetaminophen, a schedule III controlled substance by diverting the inventory from Rio Linda Drug, failing to maintain the records of acquisition and/or the invoices.

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(B&P SECTION 4301(j)

(Violation of State Statutes)

23. Paragraphs 17 through 22 are incorporated herein by reference.

Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct, for violating the following state statutes:

a. Bus. & Prof. Code, section 4059.5(a), which requires that dangerous drugs may only be delivered to "and signed for and received by a pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge."From 2002, through February 10, 2005, Respondent signed for and/or received deliveries to Rio Linda Drug of dangerous drugs, thereby violating section 4059.5(a).

b. Health & Safety Code, section 11209(a), which prohibits delivery of Schedule II, III, or IV controlled substances from being delivered "unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substance received." Any discrepancies are "to be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy." From 2002, through February 10, 2005, Respondent, who is not a pharmacist, received and signed for controlled substances delivered to Rio Linda Drug, thereby violating section 11209(a).

c. Bus. & Prof. Code, section 4301(f), Respondent violated this statute by obtaining controlled substances through fraud, deceit and subterfuge, as alleged in paragraph 22.

d. Health & Safety Code, section 11352(a)/Health & Safety Code, section 11350/ Bus. & Prof. Code, section 4060 Respondent violated these statutes by furnishing and/or possessing approximately 463,000 doses of hydrocodone with acetaminophen, a Schedule III Controlled Substance, without a prescription.

e. Bus. & Prof. Code, section 4301(q) Respondent subverted the Board's investigation, as is alleged in the following paragraph.

(B&P SECTION 4301(q)

(Subverting An investigation)

24. Paragraphs 17 through 21 are incorporated herein by reference.

Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (q), on the grounds of unprofessional conduct, for subverting an investigation, based on the following conduct:

///

a. On June 9, 2005, Respondent McKeon was scheduled for a Board appointment regarding the Board's investigation of statutory violations surrounding her employment at Rio Linda Drug. Respondent McKeon failed to keep this appointment.

b. On June 16, 2005, Respondent McKeon was scheduled for a Board appointment regarding the Board's investigation of statutory violations surrounding her employment at Rio Linda Drug. Respondent McKeon failed to keep this appointment.

c. On June 17, 2005, an agent of the Board left several phone messages for Respondent McKeon requesting her to call. Respondent failed to respond to the phone messages.

(B&P SECTION 4301(o)

(Violation of Laws and Regulations)

25. Paragraphs 17 through 24 are incorporated herein by reference.

Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (o), on the grounds of unprofessional conduct, for violating directly and/or indirectly the laws as alleged in paragraphs 18 through 24 above.

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VI.

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 49265 issued to Nikki Lynn McKeon;

2. Ordering Respondent Nikki Lynn McKeon 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;

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

DATED: 4/24/06

P. F. Harris

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

10219695

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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:	Case No. 2961
NIKKI LYNN MCKEON	**REQUEST FOR DISCOVERY**
Respondent.	[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.

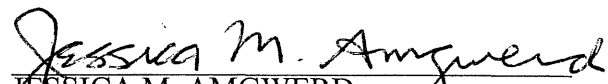
YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

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

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: 5-1-06

BILL LOCKYER, Attorney General
of the State of California



JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for 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 Accusation Against: NIKKI LYNN MCKEON Respondent.	Case No. 2961 **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 Jessica M. Amgwerd, 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

Jessica M. Amgwerd
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 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, 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 Jessica M. Amgwerd 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: NIKKI LYNN MCKEON Respondent.	Case No. 2961 **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: NIKKI LYNN MCKEON Respondent.	Case No. 2961 **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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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: Nikki Lynn McKeon**

No.: **2961**

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 May 1, 2006, I served the attached **Accusation, Request for Discovery, Statement to Respondent, Notice of Defense, applicable Government Codes** 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 **above-entitled documents** 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 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

BY U.S. & CERTIFIED MAIL TO:

Nikki Lynn McKeon
4709 Claremont Ave.
Stockton, CA 95204

Certified Article Number
7160 3901 9848 9138 1954
SENDERS RECORD

BY U.S. MAIL ONLY TO:

Susan Cappello
Enforcement Analyst
Board of Pharmacy
1625 North Market Boulevard, Suite N-219
Sacramento, CA 95834

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 May 1, 2006, at Sacramento, California.

Jessica L. Taylor
Declarant

Jessica L. Taylor
Signature

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Exhibit B

Postal Return Documents

7160 3901 9848 9138 1954

RETURN RECEIPT REQUESTED

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
P.O. BOX 944255
SACRAMENTO, CALIFORNIA 94244-2550

Nikki Lynn McKeon
4709 Claremont Ave.
Stockton, CA 95207

MCKE709 $52073584 1N 07 05/03/06
UNABLE TO FORWARD

NO FORWARD ORDER ON FILE

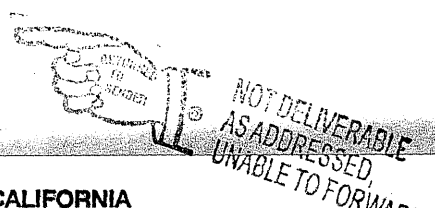
RETURN TO POSTMASTER
OF ADDRESSEE FOR REVIEW

SCANNED

MCKE709 9520733584 1N 07 05/03/06
UNABLE TO FORWARD

NO FORWARD ORDER ON FILE

RETURN TO POSTMASTER
OF ADDRESSEE FOR REVIEW



STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
P.O. BOX 944255
SACRAMENTO, CALIFORNIA 94244-2550

Nikki Lynn McKeon
4709 Claremont Av
Stockton, CA 95