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BOARD OF PHARMACY  
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of the State of California  
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Supervising Deputy Attorney General  
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Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-5794  
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2982

13 **JAMES KEO**  
2754 E. 17th Street  
14 Long Beach, CA 90804

**DEFAULT DECISION  
AND ORDER**

15 Pharmacy Technician Reg. No. TCH 53532

[Gov. Code, §11520]

16 Respondent.

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FINDINGS OF FACT

19 1. On or about November 6, 2006, Complainant Virginia Herold, in her  
20 official capacity as the Interim Executive Officer of the Board of Pharmacy, filed Accusation No.  
21 No. 2982 against James Keo (Respondent) before the Board of Pharmacy, Department of  
22 Consumer Affairs (Board).

23 2. On or about January 2, 2004, the Board issued Pharmacy Technician  
24 Registration No. TCH 53532 to Respondent. The Pharmacy Technician Registration was in full  
25 force and effect at all times relevant to the charges brought herein and will expire on February  
26 28, 2007, unless renewed.

27 3. On or about November 16, 2006, Catherine Ferracioli, an employee of the  
28 Department of Justice, served by Certified Mail a copy of Accusation No. 2982, the Statement to

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
2 11507.6, and 11507.7, to Respondent's address of record with the Board, which was and is 2754  
3 E. 17th Street, Long Beach, CA 90804. A copy of the Accusation, the related documents, and  
4 Declaration of Service are attached as **Exhibit A**, and are incorporated herein by reference.

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

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

8 (c) The respondent shall be entitled to a hearing on the merits if the  
9 respondent files a notice of defense, and the notice shall be deemed a specific  
10 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.

11 6. Respondent failed to file a Notice of Defense within 15 days after service  
12 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
13 Accusation No. 2982.

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

15 (a) If the respondent either fails to file a notice of defense or to appear at the  
16 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  
17 respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board  
19 finds Respondent is in default. The Board will take action without further hearing and, based on  
20 Respondent's express admissions by way of default and the evidence before it, contained in  
21 Exhibit A finds that the allegations in Accusation No. 2982 are true.

22 9. The total costs for investigation and enforcement are \$3,004.00 as of  
23 January 2, 2007.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent James Keo has  
26 subjected his Pharmacy Technician Registration No. TCH 53532 to discipline.

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

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

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

4                   5.       Unprofessional conduct in violation of Business and Professions Code  
5 section 4301, subdivision (o), in that Respondent illegally possessed controlled substances and  
6 dangerous drugs, as follows:

7                   a.       In or about May 2005, to on or about August 3, 2005, Respondent violated  
8 section 4060 of the Code in that he took the controlled substances, Vicodin and Xanax, without a  
9 prescription, from his places of employment, Rite Aid #5524 and Rite Aid #5525, both located in  
10 Long Beach, California.

11                   b.       In or about May 2005, to on or about August 3, 2005, Respondent violated  
12 section 4059, subdivision (a), of the Code in that he took the dangerous drugs, Vicodin, Xanax,  
13 Cialis, Soma, and Viagra, without a prescription, from his places of employment, Rite Aid #5524  
14 and Rite Aid #5525.

15                   6.       Unprofessional conduct in violation of Business and Professions Code  
16 sections 4301, subdivision (j), in that Respondent violated state laws regulating controlled  
17 substances, as follows:

18                   a.       In or about May 2005, to on or about August 3, 2005, Respondent  
19 violated Health and Safety Code section 11173, in that he took the controlled substances,  
20 Vicodin and Xanax, from his places of employment, Rite Aid #5524 and Rite Aid #5525,  
21 without his employer's consent, for sale to others.

22                   b.       In or about May 2005, to on or about August 3, 2005, Respondent violated  
23 Health and Safety Code section 11350, subdivision (a), in that he possessed the controlled  
24 substance, Vicodin, without a prescription.

25                   c.       In or about May 2005, to on or about August 3, 2005, Respondent violated  
26 Health and Safety Code section 11377, subdivision (a), in that he possessed the controlled  
27 substance, Xanax, without a prescription.

28 ///

1 d. In or about May 2005, to on or about August 3, 2005, Respondent violated  
2 Health and Safety Code section 11351, in that he possessed for sale the controlled substance,  
3 Vicodin.

4 e. In or about May 2005, to on or about August 3, 2005, Respondent violated  
5 Health and Safety Code section 11352, in that he transported, sold, furnished, or gave away the  
6 controlled substance, Vicodin, without a prescription.

7 f. In or about May 2005, to on or about August 3, 2005, Respondent violated  
8 Health and Safety Code section 11378, in that he possessed for sale the controlled substance,  
9 Xanax.

10 g. In or about May 2005, to on or about August 3, 2005, Respondent  
11 violated Health and Safety Code section 11379, subdivision (a), in that he transported, sold,  
12 furnished, or gave away the controlled substance, Xanax, without a prescription.

13 7. Unprofessional conduct in violation of Business and Professions Code  
14 sections 4301, subdivision (f), in that in or about May 2005 to on or about August 3, 2005,  
15 Respondent committed acts of dishonesty by taking the following controlled substances and other  
16 dangerous drugs from his places of employment, Rite Aid #5524 and Rite Aid #5525, without his  
17 employer's consent, for sale to others: Vicodin, Xanax, Cialis, Soma, and Viagra.

18 ORDER

19 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53532,  
20 heretofore issued to Respondent James Keo, is revoked.

21 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
22 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
23 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

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1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
2 statute.

3 This Decision shall become effective on March 23, 2007.

4 It is so ORDERED February 21, 2007

5 BOARD OF PHARMACY  
6 DEPARTMENT OF CONSUMER AFFAIRS  
7 STATE OF CALIFORNIA

8 By   
9 WILLIAM POWERS  
10 Board President

10 60186120.wpd  
11 DOJ docket number:LA2006600576

12 Attachment:

13 Exhibit A: Accusation No.2982, Related Documents, and Declaration of Service

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Exhibit A  
Accusation No. 2982,  
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General  
of the State of California  
2 NANCY A. KAISER, State Bar No. 192083  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2982

11 **JAMES KEO**  
2754 E. 17th Street  
12 Long Beach, CA 90804

OAH No.

**A C C U S A T I O N**

13 Pharmacy Technician Reg. No. TCH 53532

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about January 2, 2004, the Board issued Pharmacy Technician  
22 Registration Number TCH 53532 to James Keo (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on February 28, 2007, unless renewed.

25 **JURISDICTION**

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

1                   4.       Section 4300 of the Code permits the Board to take disciplinary action to  
2 suspend or revoke a license issued by the Board.

3                   5.       Section 4301 of the Code states, in pertinent part:

4                   The board shall take action against any holder of a license who is guilty of  
5 unprofessional conduct . . . Unprofessional conduct shall include, but is not  
6 limited to, any of the following:

6                   . . .

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

9                   . . .

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

11                  . . .

12                  (o) Violating or attempting to violate, directly or indirectly, or assisting in  
13 or abetting the violation of or conspiring to violate any provision or term of this  
14 chapter or of the applicable federal and state laws and regulations governing  
15 pharmacy, including regulations established by the board.

15                  6.       Section 4059, subdivision (a), of the Code states:

16                  A person may not furnish any dangerous drug, except upon the  
17 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
18 naturopathic doctor pursuant to Section 3640.7.

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

19                  “No person shall possess any controlled substance, except that furnished to a  
20 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
21 naturopathic doctor . . .”

22                  8.       Section 4022 of the Code prohibits the dispensing or furnishing of a  
23 dangerous drug or dangerous device, which is any drug or device that is unsafe for self-use in  
24 humans or animals, without a prescription or as legally authorized.

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

26                  For the purpose of denial, suspension, or revocation of a personal or  
27 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
28 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

1 registrant to perform the functions authorized by his license or registration in a  
2 manner consistent with the public health, safety, or welfare.

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

#### 6 COST RECOVERY

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

#### 11 STATE DRUG STATUTES

12 12. Health and Safety Code section 11007 states that "[c]ontrolled substance,"  
13 unless otherwise specified, means a drug, substance, or immediate precursor which is listed in  
14 any schedule in Section 11054, 11055, 11056, 11057, or 11058."

15 13. Health and Safety Code section 11173 states, in pertinent part:

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

19 14. Health and Safety Code section 11350, subdivision (a), states:

20 Except as otherwise provided in this division, every person who possesses  
21 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
22 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
23 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
24 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
substance 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.

25 15. Health and Safety Code section 11351 states:

26 Except as otherwise provided in this division, every person who possesses  
27 for sale or purchases for purposes of sale (1) any controlled substance specified in  
28 subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or  
(20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of  
Section 11055, or specified in subdivision (h) of Section 11056, or (2) any

1 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,  
2 shall be punished by imprisonment in the state prison for two, three, or four years.

3 16. Health and Safety Code section 11352 states:

4 (a) Except as otherwise provided in this division, every person who  
5 transports, imports into this state, sells, furnishes, administers, or gives away, or  
6 offers to transport, import into this state, sell, furnish, administer, or give away, or  
7 attempts to import into this state or transport (1) any controlled substance  
8 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of  
9 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of  
10 Section 11054, or specified in subdivision (b) or (c) of Section 11055 or specified  
11 in subdivision (h) of Section 11056, or (2) any controlled substance classified in  
12 Schedule III, IV, or V which is a narcotic drug, unless upon the written  
13 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice  
14 in this state, shall be punished by imprisonment in the state prison for three, four,  
15 or five years.

16 17. Health and Safety Code section 11377, subdivision (a), states:

17 Except as authorized by law and as otherwise provided in subdivision (b)  
18 or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of  
19 Division 2 of the Business and Professions Code, every person who possesses any  
20 controlled substance which is (1) classified in Schedule III, IV, or V, and which is  
21 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except  
22 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph  
23 (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of  
24 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of  
25 Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or  
26 veterinarian, licensed to practice in this state, shall be punished by imprisonment  
27 in a county jail for a period of not more than one year or in the state prison.

28 18. Health and Safety Code section 11378 states:

19 Except as otherwise provided in Article 7 (commencing with Section  
20 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every  
21 person who possesses for sale any controlled substance which is (1) classified in  
22 Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of  
23 Section 11056, (2) specified in subdivision (d) of Section 11054, except  
24 paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3)  
25 specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in  
26 paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in  
27 subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and  
28 subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055,  
shall be punished by imprisonment in the state prison.

### CONTROLLED SUBSTANCES / DANGEROUS DRUGS

19 19. Cialis, a brand name for Tadalafil, is categorized as a dangerous drug  
20 pursuant to section 4022 of the Code. Currently, Cialis is not scheduled by the U.S. Drug  
21 Enforcement Administration. It is used as a treatment for erectile dysfunction.  
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1 BILL LOCKYER, Attorney General  
of the State of California  
2 JENNIFER S. CADY  
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11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 JAMES KEO

13 Respondent.

Case No. 2982

**STATEMENT TO RESPONDENT**

[Gov. Code §§ 11504, 11505(b)]

15  
16 TO RESPONDENT:

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

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

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

27 ///

28 ///

1                   Nancy A. Kaiser  
2                   Deputy Attorney General  
3                   Ronald Reagan Building  
4                   300 South Spring Street, Suite 1702  
5                   Los Angeles, CA 90013.

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

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

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

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

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

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

26                   **NOTICE REGARDING STIPULATED SETTLEMENTS**

27                   It may be possible to avoid the time, expense and uncertainties involved in an  
28 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

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

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

7 If you are interested in pursuing this alternative to a formal administrative hearing,  
8 or if you have any questions, you or your attorney should contact Deputy Attorney General  
9 Nancy A. Kaiser at the earliest opportunity.

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1 BILL LOCKYER, Attorney General  
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2 JENNIFER S. CADY  
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3 NANCY A. KAISER, State Bar No. 192083  
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11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 JAMES KEO

Case No. 2982

**REQUEST FOR DISCOVERY**

13 Respondent.

[Gov. Code § 11507.6]

14  
15 **TO RESPONDENT:**

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

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

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

1 omission of the Respondent as to this person is the basis for the administrative  
2 proceeding;

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

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

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

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

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

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

25  
26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for  
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which

28 ///

1 is privileged from disclosure by law or otherwise made confidential or protected as attorney's  
2 work product.

3 Your response to this Request for Discovery should be directed to the undersigned  
4 attorney for the Complainant at the address on the first page of this Request for Discovery **within**  
5 **30 days after service** of the Accusation.

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

9 DATED: November 16, 2006

10 BILL LOCKYER, Attorney General  
of the State of California  
11 JENNIFER S. CADY  
Supervising Deputy Attorney General

12  
13 

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NANCY A. KAISER  
15 Deputy Attorney General

16 Attorneys for Complainant

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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.

\*\*\*\*\*

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

In the Matter of the Accusation Against:

JAMES KEO

Respondent.

Case No. 2982

**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.

60178411.wpd

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

In the Matter of the Accusation Against:

JAMES KEO

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Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

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60178411.wpd

**DECLARATION OF SERVICE**  
(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against:  
James Keo

Board of Pharmacy Case No. 2982

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; my business address is 300 So. Spring St., Los Angeles, CA 90013

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 November 16, 2006, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; DISCOVERY STATUTES and NOTICE OF DEFENSE (2 copies)** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; DISCOVERY STATUTES and NOTICE OF DEFENSE (2 copies)** 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, addressed as follows:

James Keo  
2754 E. 17th Street  
Long Beach, CA 90804

Respondent  
**Certified Article No. 7001 0360 0003 2706 1057**

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 November 16, 2006, at Los Angeles, California.

C. Ferracioli

\_\_\_\_\_  
Typed Name

*C. Ferracioli*

\_\_\_\_\_  
Signature

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

7001 0360 0000 0960 1007  
7001 0360 0003 2706 1057

**OFFICIAL USE**

Postage	\$	Re: James Keo	Postmark Here
Certified Fee		Mailed 11-16-06	
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		

Sent To James Keo

Street, Apt. No.,  
or PO Box No. 2754 E. 17th St.

City, State, ZIP+4 LONG BEACH, CA 90805

PS Form 3800, January 2001 See Reverse for Instructions