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6 Attorneys for Complainant  
7

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3008

11 ELIZABETH ACOSTA  
12 427 W. Kolher St.  
Stockton, CA 95206

13 Respondent.  
14

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

15 FINDINGS OF FACT

16 1. On or about August 18, 2006, Complainant Virginia Herold, in her official  
17 capacity as the Interim Executive Officer of the Board of Pharmacy, filed Accusation No. 3008  
18 against Elizabeth Acosta (Respondent) before the Board of Pharmacy.

19 2. On or about April 14, 2003, the (Board) issued Pharmacy Technician  
20 Registration No. TCH 47800 to Respondent. The Pharmacy Technician Registration was in full  
21 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
22 2006, unless renewed.

23 3. On or about August 24, 2006, Kasey P. Arismende, an employee of the  
24 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
25 3008, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
26 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
27 which was and is 427 W. Kohler St., Stockton, California 95206. A copy of the Accusation, the  
28

1 related documents, and Declaration of Service are attached as exhibit A, and are incorporated  
2 herein by reference.

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

5 5. The documents were served by certified and regular mail. The documents  
6 sent via regular and were not returned, and are presumed to have been received. The documents  
7 sent via certified mail were returned marked "unclaimed." A copy of the returned mail is  
8 attached hereto as Exhibit B.

9 6. Government Code section 11506 states, in pertinent part:

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service  
15 upon her of the Accusation, and therefore waived her right to a hearing on the merits of  
16 Accusation No. 3004.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board  
23 of Pharmacy finds Respondent is in default. The Board of Pharmacy will take action without  
24 further hearing and, based on Respondent's express admissions by way of default and the  
25 evidence before it, contained in exhibit A finds that the allegations in Accusation No. 3008 are  
26 true.

27 10. The total costs for investigation and enforcement are \$2,190.75 costs as of  
28 September 21, 2006.

DETERMINATION OF ISSUES

1  
2           1.       Based on the foregoing findings of fact, Respondent Elizabeth Acosta has  
3 subjected her Pharmacy Technician Registration No. TCH 47800 to discipline.

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

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

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

9           a.       Respondent is subject to disciplinary action under sections 490 and  
10 4301 subdivisions (a), (f), and (k), in that on or about January 11, 2006, respondent was  
11 convicted of her plea of guilty to a violation of Penal Code section 273 (a) (a) (Child  
12 Abuse/Endangerment), in Case No. SF098568B, entitled People v. Edward Gerald Rivera  
13 aka Edward Gerard Rivera and Elizabeth Luz Acosta aka Elizabeth Acosta, in the  
14 Superior Court of California, San Joaquin County. Said crime is substantially related to  
15 the qualifications, functions or duties of a pharmacy technician. The circumstances are  
16 as follows:

17           1. On or about December 16, 2005, respondent willfully and unlawfully,  
18 under circumstances likely to produce great bodily harm and death, injure, cause, and  
19 permit a child, Edward R., date of birth 2/23/89 to suffer and to be inflicted with  
20 unjustifiable physical pain and mental suffering, and having the care and custody of said  
21 child, injure, cause and permit the health of said child to be injured and did wilfully cause  
22 and permit said child to be placed in such situation that his person and health was  
23 endangered.

24           b. Respondent is subject to disciplinary action under section 4301 subdivisions (f),  
25 (h), and (j), in conjunction with Health and Safety Code section 11170 in that on or  
26 before December 16, 2005, respondent admitted to a Stockton Police Officer that she had  
27 self-administered an unknown quantity of Methamphetamine, a controlled substance.

28 //

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 47800, heretofore issued to Respondent Elizabeth Acosta, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion to the Board of Pharmacy located at 1625 North Market Boulevard, Suite N-219 Sacramento, California, 95834, 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 7, 2006.

It is so ORDERED November 7, 2006

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By William Powers  
WILLIAM POWERS  
Board President

Attachments:

Exhibit A: Accusation No. 3004, Related Documents, and Declaration of Service  
Exhibit B: Returned mail

Exhibit A  
Accusation No. 3008,  
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General  
of the State of California  
2 ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 322-5524  
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3008

11 ELIZABETH ACOSTA

**STATEMENT TO RESPONDENT**

12 Respondent.

[Gov. Code §§ 11504, 11505(b)]

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14  
15 TO RESPONDENT:

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

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

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

26 **Elena L. Almanzo**  
27 **Deputy Attorney General**  
**1300 I Street, Suite 125**  
28 **P.O. Box 944255**  
**Sacramento, California 94244-2550.**

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

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

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

10          The hearing may be postponed for good cause. If you have good cause, you are  
11 obliged to notify the Office of Administrative Hearings, 560 J Street, Suite 340/360, Sacramento,  
12 California 95814, within ten (10) working days after you discover the good cause. Failure to  
13 notify the Office of Administrative Hearings within ten (10) days will deprive you of a  
14 postponement.

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

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

21                   **NOTICE REGARDING STIPULATED SETTLEMENTS**

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

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

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

3 ///

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

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1 BILL LOCKYER, Attorney General  
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2 ELENA L. ALMANZO, State Bar No. 131058  
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9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3008

11 ELIZABETH ACOSTA  
12 427 W. Kolher St.  
Stockton, CA 95206  
13 Pharmacy Technician Registration  
No. TCH 47800

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

14 Respondent.

15  
16 Complainant alleges:

17 PARTIES

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

20 2. On or about April 13, 2003, the Board of Pharmacy issued Pharmacy  
21 Technician Registration Number TCH 47800 to Elizabeth Acosta (Respondent). Said license  
22 will expire July 31, 2006 unless renewed.

23 JURISDICTION

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

27 4. Section 118 of the Code states in pertinent part:

28 "(b) The suspension, expiration, or forfeiture by operation of law of a license

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

7           5.       Section 4300 of the Code states in pertinent part:

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

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

12           "(1) Suspending judgment.

13           "(2) Placing him or her upon probation.

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

15           "(4) Revoking his or her license.

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

18           6.       Section 4301 of the Code states in pertinent part:

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

23           "(a) Gross immorality.

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

27           "(h) The administering to oneself, of any controlled substance, or the use of any  
28 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or

1 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
2 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
3 the public the practice authorized by the license.

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

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

23           7.       Section 490 of the Code states:

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

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

5 8. "Methamphetamine" is a Schedule II controlled substance as designated by  
6 Health and Safety Code section 11055(d)(2).

7 9. Health & Safety Code section 11170 states that no person shall prescribe,  
8 administer, or furnish a controlled substance for himself.

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

13 FIRST CAUSE FOR DISCIPLINE

14 (Conviction of a Crime)

15 11. Respondent is subject to disciplinary action under sections 490 and 4301  
16 subdivisions (a), (f), and (k), in that on or about January 11, 2006, respondent was convicted of  
17 her plea of guilty to a violation of Penal Code section 273 (a) (a) (Child Abuse/Endangerment),  
18 in Case No. SF098568B, entitled People v. Edward Gerald Rivera aka Edward Gerard Rivera and  
19 Elizabeth Luz Acosta aka Elizabeth Acosta, in the Superior Court of California, San Joaquin  
20 County. Said crime is substantially related to the qualifications, functions or duties of a pharmacy  
21 technician. The circumstances are as follows:

22 A. On or about December 16, 2005, respondent willfully and unlawfully, under  
23 circumstances likely to produce great bodily harm and death, injure, cause, and permit a child,  
24 Edward R., date of birth 2/23/89 to suffer and to be inflicted with unjustifiable physical pain and  
25 mental suffering, and having the care and custody of said child, injure, cause and permit the  
26 health of said child to be injured and did wilfully cause and permit said child to be placed in such  
27 situation that his person and health was endangered.

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12. Respondent is subject to disciplinary action under section 4301 subdivisions (f), (h), and (j), in conjunction with Health and Safety Code section 11170 in that on or before December 16, 2005, respondent admitted to a Stockton Police Officer that she had self-administered an unknown quantity of Methamphetamine, a controlled substance.

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:

B. Ordering Elizabeth Acosta 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;

DATED: 8/18/06

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

In the Matter of the Accusation Against:

ELIZABETH ACOSTA

Respondent.

Case No. 3008

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against:

ELIZABETH ACOSTA

Respondent.

Case No. 3008

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

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I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7**  
**PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.



## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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In the Matter of the Accusation Against:

ELIZABETH ACOSTA

Respondent.

Case No. 3008

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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ELIZABETH ACOSTA

Respondent.

Case No. 3008

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

BILL LOCKYER, Attorney General  
of the State of California  
ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-5524  
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:

ELIZABETH ACOSTA

Respondent.

Case No. 3008

**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;

1 ///

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

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

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

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

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

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

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

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


1 30 days after service of the Accusation.

2 ///

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

6 DATED: 8/29/06

7 BILL LOCKYER, Attorney General  
8 of the State of California

9  
10   
11 ELENA L. ALMANZO  
12 Deputy Attorney General

13 Attorneys for Complainant

14 10269136.wpd

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7**  
**PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

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

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

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

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

\*\*\*\*\*



**DECLARATION OF SERVICE**

(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against: Elizabeth Acosta

Board of Pharmacy Case No. 3008

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 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550

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 August 24, 2006, I served the attached **Accusation, Statement to Respondent, Notice of Defense, Request for Discovery and Discovery Statutes** 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, Statement to Respondent, Notice of Defense, Request for Discovery and Discovery Statutes** 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:

Elizabeth Acosta  
427 W. Kohler St.  
Stockton, CA 95206

**Certified Article Number**

7160 3901 9849 5177 6973

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 24, 2006, at Sacramento, California.

Kasey P. Arismende

Typed Name

*Kasey P. Arismende*  
Signature

7160 3901 9849 5177 6973

**TO:**  
Elizabeth Acosta  
427 W. Kohler St.  
Stockton, CA 95206

**SENDER:** Elena L. Almanzo

**REFERENCE:**

SA2006102029  
ELA/Acosta/AccusPkt/POS

PS Form 3800, January 2005

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

<b>US Postal Service</b> <b>Receipt for</b> <b>Certified Mail</b>  No Insurance Coverage Provided Do Not Use for International Mail	<b>POSTMARK OR DATE</b>
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Exhibit B  
Returned mail

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED  
USPS MAIL CARRIER  
DETACH ALONG PERFORATION

2. Article Number



7160 3901 9849 5177 6973

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Elizabeth Acosta  
427 W. Kohler St.  
Stockton, CA 95206

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

**X**

☐ Agent  
☐ Addressee

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

☐ Yes  
☐ No

SA2006102029  
Elena L. Almanzo

PS Form 3811, January 2005

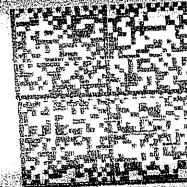
Domestic Return Receipt

Thank you for using Return Receipt Service



7160 3901 9849 5177 6973

RETURN RECEIPT REQUESTED



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

— RETURN TO SENDER —

( )	PAK	( )	ASS	( )	CA
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( )	CA	( )	MYR		
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FINAL NOT

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W  
8/24/06  
J