BILL LOCKYER, Attorney General
of the State of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2554
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Attorneys for Complainant

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

In the Matter of the Against: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Pharmacy Technician Registration No. 35458 Respondent.	Case No. 3034 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 31, 2006, Complainant, Virginia Herold, in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 3034 against Cecil Flowers (Respondent) before the Board.

2. On or about December 12, 2000, the Board issued Pharmacy Technician Registration No. 35458 to Respondent. The license will expire on December 31, 2006, unless renewed.

3. On or about November 8, 2006, Janice E. Williams, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3034, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 1813 E Ave R-12, Palmdale, California 92550. 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. 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."

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3034.

7. 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."

8. 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 the evidence before it, finds that the allegations in Accusation No. 3034 are true.

9. The total costs for investigation and enforcement are $3,431.50 as of December 12, 2006.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Cecil Flowers has subjected his Pharmacy Technician Registration No. 35458 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 is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. **Business and Professions Code (Code) sections 4300 and 490**: Respondent was convicted of a substantially related crime, in that on or about March 2, 2006, Respondent was convicted on a plea of nolo contendere to one count of violating Health and Safety Code section 11351, subdivision (a), a felony (possession of a controlled substance), as more fully discussed in paragraph 12 of Accusation No. 3034.

b. **Code section 4301, subdivision (j)**: Respondent committed unprofessional conduct, in that, Respondent was found to be in possession of a controlled substance, Norco, in violation of Code section 4060, and was convicted of Health and Safety Code section 11351, subdivision (a), as more fully discussed in paragraphs 12 and 13 of Accusation No. 3034.

c. **Code section 4301, subdivision (l)**: Respondent committed unprofessional conduct, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician, as more fully discussed in paragraphs 12 and 14 of Accusation No. 3034.

d. **Code section 4301, subdivision (f)**: Respondent committed unprofessional conduct, in that, from on or about February 12, 2006 through February 19, 2006, Respondent committed acts of dishonesty by removing the drug Norco, a controlled substance, from his place of employment without his employer's consent, as more fully discussed in paragraph 15 of Accusation No. 3034.

e. **Code section 4301, subdivision (o)**: Respondent committed unprofessional conduct, in that Respondent violated the Pharmacy Law, as more fully discussed in paragraphs 12 through 16 of Accusation No. 3034.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. 35458, heretofore issued to Respondent Cecil Flowers, 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 February 21, 2007.

It is so ORDERED January 22, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

60181828.wpd
DOJ docket number:LA2006600419

Attachments:

Exhibit A: Accusation No.3034, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 3034,
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
SCOTT J. HARRIS, State Bar No. 238437
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Attorneys for Complainant

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

In the Matter of the Against: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Pharmacy Technician Registration No. TCH 35458 Respondent.	Case No. 3034 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 12, 2000, the Board issued Pharmacy Technician Registration Number TCH 35458 to Cecil Flowers (Respondent). The license will expire on December 31, 2006, unless renewed.

JURISDICTION

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

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4. Section 4300 of the Code provides, in pertinent part, that the Board is permitted to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 of the Code states:

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

...

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

...

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

...

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

"(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."

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

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

7. Section 4060 of the Code state:

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

8. Section 490 of the Code states:

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

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

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

CONTROLLED SUBSTANCES

11. Norco, is the brand name for the combination narcotic, Hydrocodone (Vicodin) and Acetaminophen. Hydrocodone is a Schedule II controlled narcotic substance pursuant to Health and Safety Code section 11055(b)(1)(J) and a dangerous drug pursuant to Business and Professions Code section 4022. Acetaminophen is a Schedule III controlled substance as designated in Health and Safety Code section 11056(e)(2) and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

12. Respondent is subject to disciplinary action under sections 4300 and 490 of the code, in that, on or about March 2, 2006, Respondent was convicted on a plea of nolo contendere to one count violating Health and Safety Code section 11351, a felony, (possession for sale of a controlled substance), in the Superior Court of California, County of San Bernardino, Case No. FWV037079, entitled *The People of the State of California vs. Cecil E. Flowers, Jr.* The circumstances surrounding the conviction are as follows:

a. On or about February 12, 2006 through February 19, 2006, Respondent diverted the drug Norco from Longs Drug Store (Store # 684). In conjunction with Longs Loss Prevention and the Drug Enforcement Agency, the Ontario Police Department conducted an investigation over several days revealing Respondent's diversion of several bottles of the drug Norco. Respondent was later found to be in possession of the drug Norco.

SECOND CAUSE FOR DISCIPLINE

(Violation of State Drug laws Regulating Controlled Substances)

13. Respondent's license is subject to disciplinary action under section 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent was found to be in

possession of a controlled substance, Norco, in violation of section 4060 of the Code, and, was convicted of violating Health and Safety Code section 11351, subdivision (a), as discussed in paragraph 12, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Substantially Related Crime)

14. Respondent's license is subject to disciplinary action under section 4301, subdivision (l), on the grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician, as discussed in paragraph 12, above.

FOURTH CAUSE FOR DISCIPLINE

(Committed Acts of Dishonesty)

15. Respondent's license is subject to disciplinary action under section 4301, subdivision (f), on the grounds of unprofessional conduct, in that, from on or about February 12, 2006 through February 19, 2006, Respondent removed the drug Norco, a controlled substance, from his place of employment, Longs Drug Store, (Longs #684), without his employer's consent, as more fully discussed in paragraph 12, above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law)

Respondent's license is subject to disciplinary action under section 4301, subdivisions (o), on the grounds of unprofessional conduct, in that Respondent violated the Pharmacy Law, as more fully discussed in paragraphs 12 through 15, above.

* * *

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 35458, issued to Cecil Flowers

2. Ordering Cecil Flowers 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: 10/31/06

Virginia Herold
Interim Executive Officer
Board of Pharmacy
State of California
Complainant

LA2006600419

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BILL LOCKYER, Attorney General
of the State of California
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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: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Respondent.	Case No. 3034 **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 Scott J. Harris, 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.

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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

Scott J. Harris
Deputy Attorney General
Ronald Reagan Building
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

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, 320 West Fourth Street, Suite 630, Los Angeles, California 90013, 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.

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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 Scott J. Harris 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: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Respondent.	Case No. 3034 **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 ; 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 .

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 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: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Respondent.	Case No. 3034 **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 .

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check appropriate box:

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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 _____

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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: CECIL FLOWERS 1813 E Ave R-12 Palmdale, California 93550 Respondent.	Case No. 3034 **REQUEST FOR DISCOVERY** [Gov. Code § 11507.6]

TO RESPONDENT:

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

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

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

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

a. A statement of a person, other than the Respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission

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

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

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

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

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

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

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

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

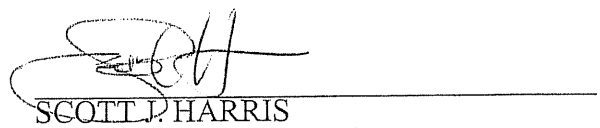
Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

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: 11/8/06

BILL LOCKYER, Attorney General
of the State of California

GLORIA A. BARRIOS
Supervising Deputy Attorney General



SCOTT J. HARRIS
Deputy Attorney General

Attorneys for Complainant

60177034.wpd

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

SECTION 11507.5: Exclusivity of discovery provisions

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

SECTION 11507.6: Request for discovery

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

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

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

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

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

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

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

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

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

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

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

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

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

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

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

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

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DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against:

Cecil Flowers

Board of Pharmacy Case No. 3034

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 8, 2006, I served the attached **Accusation, Statement to Respondent, Notice of Defense, Request for Discovery, Government Code sections** 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, Government Code sections** 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:

Cecil Flowers
1813 E Ave R-12
Palmdale, California 93550

Certified Mail Number
7001 0360 0003 2706 6649

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 8, 2006, at Los Angeles, California.

Janice E. Williams
Typed Name

Janice Williams
Signature

60177064.wpd

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

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