

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. 3267

CLAUDIA RAFAEL
1174 S. Crenshaw Blvd.
Los Angeles, CA 90019
Pharmacy Technician Registration No. TCH
46934

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about September 17, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3267 against Claudia Rafael (Respondent) before the Board of Pharmacy.

2. On or about March 12, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 46934 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

3. On or about September 25, 2009, Gilda R. Sanchez, an employee of the Department of Justice, served by Certified (Mailing No. 71603901984833475246) and First Class Mail a copy of the Accusation No. 3267, Statement to Respondent, Notice of Defense, and Request for

1 Discovery to Respondent's address of record with the Board, which was and is: 1174 S. Crenshaw
2 Blvd., Los Angeles, CA 90019. A copy of the Accusation and service documents, including
3 proof of service, is attached as **Exhibit A**, and is incorporated herein by reference.

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

6 5. On or about September 28, 2009, the postal return card for Certified Mailing No.
7 71603901984833475246 was returned by the U.S. Postal Service, showing that the mailing was
8 received by the addressee and signed for. The referenced postal return card is attached as **Exhibit**
9 **B** to the original decision and is incorporated herein by reference.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3267.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 evidence on file herein, finds that the allegations in Accusation No. 3267 are true.

26 10. The total cost for investigation and enforcement in connection with the Accusation
27 are \$3,285.25 as of January 27, 2010.

28 ///

///

///

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Claudia Rafael has subjected her Pharmacy Technician Registration No. TCH 46934 to discipline.

2. A copy of the Accusation is 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. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that on January 10, 2007, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand theft: property over \$400] in the criminal proceeding entitled *People of the State of California v. Claudia R. Rafael* (Super. Ct. Los Angeles County, 2007, No. 6CA26300). The Court sentenced Respondent to 5 days in Los Angeles County Jail and placed Respondent on probation for 12 months, with terms and conditions.

(1). The circumstances surrounding the 2007 conviction are as follows: Respondent had been employed as a pharmacy technician at Walgreens Drug Store ("Walgreens"), in Los Angeles for approximately three years. On December 8, 2006, Walgreen security personnel reviewing surveillance camera videos from the previous day, observed Respondent conceal a bottle of Viagra (100mg) while filling a prescription. When confronted by Walgreens personnel, Respondent admitted stealing the bottle of Viagra she is seen concealing in the video. Respondent subsequently admitted stealing at least 11 bottles of Viagra (ten '100 mg' bottles and one '50 mg' bottle) from Walgreens between approximately June and December 2006, which she furnished to her mother to sell to a third party for a reported price of \$180.00 per bottle.

(2). The Board expressly finds that the 2007 grand theft conviction described above was a crime substantially related to the qualifications, functions or duties of a pharmacy technician.

1 B. Respondent is subject to disciplinary action under section 4301, subdivision (j),
2 as defined in section 4059, in that on or about December 8, 2006, Respondent, by her own
3 admission, stole a bottle of Viagra 100 mg from her employer on December 7, 2006, and stole at
4 least 11 bottles of Viagra from her employer between approximately June and December 2006,
5 which she furnished to her mother to sell to a third party for a reported price of \$180.00 per
6 bottle, as described more fully in sub-paragraph "A" above.

7 C. Respondent is subject to disciplinary action under section 4301, subdivision
8 (f), in that Respondent committed dishonest acts by stealing dangerous drugs from her employer
9 and furnishing them to her mother without a prescription, for financial profit, as described more
10 fully in sub-paragraph "A" above.

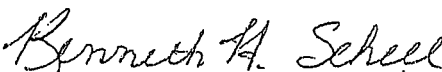
11 ORDER

12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 46934, heretofore
13 issued to Respondent Claudia Rafael, is revoked.

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

18 This Decision shall become effective on May 26, 2010.

19 It is so ORDERED April 26, 2010.

20 
21 KENNETH H. SCHELL, BOARD PRESIDENT
22 FOR THE BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS

24 60517883.DOC
25 DOJ docket number: LA2009602895

26 Attachments:

27 Exhibit A: Accusation No.3267 and Service Documents

28 Exhibit B: Postal Return Card

Exhibit A

Accusation No. 3267 – Accusation and Service Documents

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3267

12 **CLAUDIA R. RAFAEL**
1174 S. Crenshaw Blvd.
13 Los Angeles, CA 90019

A C C U S A T I O N

14 Pharmacy Technician Registration No.
15 TCH46934

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 12, 2003, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 46934 to Claudia R. Rafael (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2010, unless renewed.

25 **JURISDICTION**

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

28 ///

STATUTORY PROVISIONS

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

5. Section 490 states, in pertinent part:

“(a) In addition to any other action that a board is permitted to take against a licensee, 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.

“(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision(a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

“(c) 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 that 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.”

6. Section 4059, subdivision (a) states, in pertinent part:

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

7. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

///

1 8. Section 4301 states:

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

5

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

9

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

12

13 "(l) The conviction of a crime substantially related to the qualifications, functions, and
14 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
15 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
16 substances or of a violation of the statutes of this state regulating controlled substances or
17 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
18 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
19 The board may inquire into the circumstances surrounding the commission of the crime, in order
20 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
21 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
22 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
27 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
28

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

3 REGULATORY PROVISIONS

4 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

11 COST RECOVERY

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

16 DANGEROUS DRUG

17 11. "Viagra," is the brand name for sildenafil citrate and is categorized as a dangerous
18 drug pursuant to section 4022.

19 FIRST CAUSE FOR DISCIPLINE

20 (Conviction of a Substantially Related Crime)

21 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l)
22 and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that on
23 January 10, 2007, Respondent was convicted for a crime substantially related to the
24 qualifications, functions or duties of a pharmacy technician as follows:

25 GRAND THEFT (2007)

26 a. On or about January 10, 2007, after pleading nolo contendere, Respondent was
27 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand
28 theft: property over \$400] in the criminal proceeding entitled *People of the State of California v.*

1 *Claudia R. Rafael* (Super. Ct. Los Angeles County, 2007, No. 6CA26300). The Court sentenced
2 Respondent to 5 days in Los Angeles County Jail and placed Respondent on probation for 12
3 months, with terms and conditions.

4 b. The circumstances surrounding the conviction are that at the time of the
5 misconduct for which she was convicted, Respondent had been employed as a pharmacy
6 technician at Walgreens Drug Store ("Walgreen"), in Los Angeles for approximately three years.
7 On December 8, 2006, Walgreen security personnel reviewing surveillance camera videos from
8 the previous day, observed Respondent conceal a bottle of Viagra (100mg) while filling a
9 prescription. When confronted by Walgreen personnel, Respondent admitted stealing the bottle of
10 Viagra she is seen concealing in the video. Respondent subsequently admitted stealing at least 11
11 bottles of Viagra (ten '100 mg' bottles and one '50 mg' bottle) from Walgreen between
12 approximately June and December 2006, which she furnished to her mother to sell to a third party
13 for a reported price of \$180.00 per bottle.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Furnishing Dangerous Drugs Without a Prescription)**

16 13. Respondent is subject to disciplinary action under section 4301, subdivision (j),
17 as defined in section 4059, in that on or about December 8, 2006, Respondent, by her own
18 admission, stole a bottle of Viagra 100 mg from her employer on December 7, 2006, and stole at
19 least 11 bottles of Viagra from her employer between approximately June and December 2006,
20 which she furnished to her mother to sell to a third party for a reported price of \$180.00 per
21 bottle, as described more fully in paragraph 12 (a) above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dishonest Acts)**

24 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
25 that Respondent committed dishonest acts by stealing dangerous drugs from her employer and
26 furnishing them to her mother without a prescription, for financial profit. Complainant refers to,
27 and by this reference incorporates, the allegations set forth above in paragraphs 12 and 13,
28 inclusive, as though fully set forth.

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 No. TCH 46934, issued to Respondent.
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/17/09


VIRGINIA HEROLD

Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2009602895
60432564.doc
(jz-7/7/09)

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3267

11 **CLAUDIA RAFAEL**

STATEMENT TO RESPONDENT

12 Respondent. [Gov. Code §§ 11504, 11505(b)]
13

14 **TO RESPONDENT:**

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

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

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

25
26 Susan Melton Wilson
Deputy Attorney General
27 Ronald Reagan Building
300 South Spring Street, Suite 1702
28 Los Angeles, CA 90013

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

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

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

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

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

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

17 NOTICE REGARDING STIPULATED SETTLEMENTS

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

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

27 ///

28 ///

1 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
2 have any questions, you or your attorney should contact Deputy Attorney General Susan Melton
3 Wilson at the earliest opportunity.

4 Dated: September 25, 2009

5 EDMUND G. BROWN JR.
6 Attorney General of California
7 GREGORY J. SALUTE
8 Supervising Deputy Attorney General



9 SUSAN MELTON WILSON
10 Deputy Attorney General
11 *Attorneys for Complainant*

12 LA2009602895
13 60463355.doc
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

CLAUDIA RAFAEL

Respondent.

Case No. 3267

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: _____

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.

LA2009602895

60463355.DOC

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

In the Matter of the Accusation Against:

CLAUDIA RAFAEL

Respondent.

Case No. 3267

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: _____

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.

LA2009602895

60463355.DOC

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3267

11 CLAUDIA RAFAEL

REQUEST FOR DISCOVERY

12 Respondent.
13

14 **TO RESPONDENT:**

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

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

- 21 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
22 including, but not limited to, those intended to be called to testify at the hearing, and
23 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the
24 following in the possession or custody or under control of the Respondent:

- 25 a. A statement of a person, other than the Respondent, named in the initial
26 administrative pleading, or in any additional pleading, when it is claimed that the act or
27 omission of the Respondent as to this person is the basis for the administrative proceeding;
28

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

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

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

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

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

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

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

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

28 ///

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

4
5 Dated: September 25, 2009

Respectfully submitted,

6
7 EDMUND G. BROWN JR.
Attorney General of California
8 GREGORY J. SALUTE
Supervising Deputy Attorney General

9
10 

11 SUSAN MELTON WILSON
Deputy Attorney General
12 *Attorneys for Complainant*

13
14 LA2009602895
60463355.doc

**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 BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: In the Matter of the Accusation Against:
Claudia Rafael

No.: 3267

I declare:

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

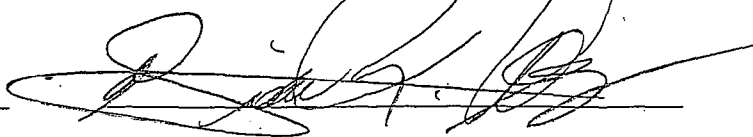
On September 25, 2009, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (2 COPIES), REQUEST FOR DISCOVERY, GOVERNMENT CODE SECTIONS 11507, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (2 COPIES), REQUEST FOR DISCOVERY, GOVERNMENT CODE SECTIONS 11507, 11507.6, 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Claudia R. Rafael
Pharmacy Technician
1174 S. Crenshaw Blvd.
Los Angeles, CA 90019
Respondent
Certified Return Receipt Requested
7160 3901 98489 3347 5246

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 September 25, 2009, at Los Angeles, California.

Gilda R. Sanchez

Declarant



Signature

7160 3901 9848 3347 5246

TO: Claudia R. Rafael
1174 S. Crenshaw Blvd.
Los Angeles, CA 90019

SENDER: Susan Melton Wilson

REFERENCE: LA2009602895

PS Form 3800, January 2005

RETURN
RECEIPT
SERVICE

Post

Certified Article Number

Cert

Ret

7160 3901 9848 3347 5246

Res

SENDER'S RECORD

Total

US Postal Service

Receipt for
Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Exhibit B

Accusation No. 3267- Postal Return Card

UNITED STATES POSTAL SERVICE

PRINT YOUR NAME, ADDRESS AND ZIP CODE BELOW

First Class Mail
US Postage Paid
Permit No. G - 10

Susan Melton Wilson
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

2. Article Number



7160 3901 9848 3347 5246

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Claudia R. Rafael
1174 S. Crenshaw Blvd.
Los Angeles, CA 90019

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

MARIO Borge

B. Date of Delivery

9-28-09

C. Signature

X:

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

LA2009602895 (Acc. Package)
Susan Melton Wilson