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

In the Matter of the Accusation Against:  
  
**CHRISTOPHER VARGAS**  
  
Respondent.

Case No. 3359

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 10, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3359 against Christopher Vargas (Respondent) before the Board of Pharmacy.

2. On or about December 3, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 31717 to Respondent. The License was in full force and effect at all times relevant to the charges brought herein, and will expire on June 30, 2011, if not renewed.

3. On or about October 16, 2009, D. Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3359, a Statement to Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board: 2036 Crosscreek Road, Chula Vista, CA 91913 and 462 Avenida Gabriel, Chula Vista, CA 91914. Copies of the Accusation and service materials 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).

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

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

6 6. Respondent failed to file a Notice of Defense within 15 days after service upon his of  
7 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3359.

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

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

12 8. Pursuant to its authority under Government Code section 11520, the Board finds  
13 Respondent is in default. The Board will take action without further hearing and, based on the  
14 evidence on file herein, finds that the allegations in Accusation No. 3359 are true.

15 9. The total costs for investigation and enforcement in connection with the Accusation  
16 are \$4,859.00 as of November 3, 2009.

17 DETERMINATION OF ISSUES

18 1. Based on the foregoing findings of fact, Respondent Christopher Vargas has  
19 subjected his Pharmacy Technician License No. TCH 31717 to discipline.

20 2. A copy of the Accusation is attached.

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

22 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
23 License based upon the following violations alleged in the Accusation:

24 a. In violation of Business and Professions Code section 4301(f), Respondent  
25 committed acts involving dishonesty, fraud, or deceit;

26 b. In violation of Business and Professions Code section 4301(j) in conjunction with  
27 Code section 4059 and H&S Code section 11350(a), Respondent possessed controlled substances  
28 without a legitimate prescription;

1 c. In violation of Business and Professions Code section 4301(j) in conjunction with  
2 Code section 4059(a) and H&S Code section 11170, Respondent illegally furnished controlled  
3 substances to himself;

4 d. In violation of Business and Professions Code section 4301(j) in conjunction with  
5 H&S Code section 11173, Respondent obtained controlled substances by fraud, deceit and  
6 subterfuge or concealment of a material fact;

7 e. In violation of Business and Professions Code section 490 and 4301(l), Respondent  
8 was convicted of a crime substantially related to the qualifications, functions, or duties of a  
9 pharmacy technician;

10 f. In violation of Business and Professions Code section 4301(j) in conjunction with  
11 H&S Code section 11375(b) (l), for possession for sale of a controlled substance, in that on or  
12 about July 10, 2008, Respondent pled guilty to possession for sale of a controlled substance, 82  
13 pills of alprazolam.

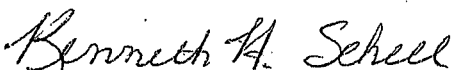
14 ORDER

15 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 31717, heretofore  
16 issued to Respondent Christopher Vargas, is revoked.

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

21 This Decision shall become effective on February 10, 2010.

22 It is so ORDERED January 11, 2010.

23   
24 \_\_\_\_\_  
25 KENNETH H. SCHELL, BOARD PRESIDENT  
26 FOR THE BOARD OF PHARMACY  
27 DEPARTMENT OF CONSUMER AFFAIRS

28 Attachment: Exhibit A: Accusation No. 3359

**Exhibit A**  
**Accusation Packet No. 3359 and Service Documents**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 RITA M. LANE, State Bar No. 171352  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2614  
Facsimile: (619) 645-2061  
8  
9 Attorneys for Complainant

10 **BEFORE THE**  
11 **BOARD OF PHARMACY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 3359

15 CHRISTOPHER D. VARGAS  
2036 Crosscreek Road  
Chula Vista, CA 91913

**ACCUSATION**

16 462 Avenida Gabriel  
Chula Vista, CA 91914

17 Pharmacy Technician Registration  
18 No. TCH 31717

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about December 3, 1999, the Board of Pharmacy issued Pharmacy  
26 Technician Registration Number TCH 31717 to Christopher D. Vargas (Respondent). The  
27 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
28 brought herein and will expire on June 30, 2011, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws of the Business and Professions  
4 Code:

5 4. Section 4300(a) of the Code states in pertinent part:

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

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

10 **STATUTORY PROVISIONS**

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

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

16 .....

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

20 .....

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

23 .....

24 (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of  
26 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
27 United States Code regulating controlled substances or of a violation of the  
28 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

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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.

7. Section 4059 of the Code states:

(a) 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.

....

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit,"  
2 "authority," and "registration."

3 11. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall  
4 prescribe, administer, or furnish a controlled substance for himself."

5 12. H&S Code section 11173 states in pertinent part that no person shall obtain a  
6 controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

7 13. H&S Code section 11350(a) states in pertinent part that:

8 Except as otherwise provided in this division, every person who possesses  
9 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1)  
10 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
11 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
12 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
13 substance classified in Schedule III, IV, or V which is a narcotic drug, unless  
14 upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
15 licensed to practice in this state, shall be punished by imprisonment in the state  
16 prison.

17 14. H&S Code section 11375(b)(1) states in pertinent part that:

18 Every person who possesses for sale, or who sells, any substance specified  
19 in subdivision (c) shall be punished by imprisonment in the county jail for a  
20 period of not more than one year or state prison.

### 21 REGULATORY PROVISIONS

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

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

### COST RECOVERY

29 16. Section 123.5 provides that the Board may request the administrative law judge to  
30 direct any licentiate found to have committed a violation or violations of the licensing act to  
31 pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the  
32 case, including charges imposed by the Attorney General. Under section 125.3(c), a certified  
33 copy of the actual costs or a good faith estimate of costs where actual costs are not available,  
34



1 including investigative and enforcement costs and charges of the Attorney General up to the date  
2 of the hearing, signed by the designated representative of the entity bringing the proceeding shall  
3 be *prima facie* evidence of the reasonable costs of investigation and prosecution of the case.

4 **DRUG**

5 17. Hydrocodone/Acetaminophen (APAP) is a narcotic Schedule III controlled  
6 substance, pursuant to H&S Code section 11056(e)(4) and is used to relieve moderate to severe  
7 pain.

8 18. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as  
9 designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to  
10 Business and Professions Code section 4022. Xanax tablets are indicated for the management of  
11 anxiety disorder or the short-term relief of symptoms of anxiety.

12 19. Baclofen is a prescription drug and is used as a muscle relaxer and an antispastic  
13 agent.

14 **CHARGES AND ALLEGATIONS**

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Acts of Dishonesty, Fraud and Deceit)**

17 20. Respondent is subject to disciplinary action under Code section 4301(f) for acts of  
18 dishonesty, fraud or deceit, as more particularly alleged below:

19 a. Between November 1, 2006 and March 7, 2008, Respondent was employed as a  
20 pharmacy technician at Life Wellness Pharmacy. Respondent used personal identifying  
21 information of the pharmacist he worked for and completed a wholesaler application form with  
22 Hygen Pharmaceuticals Inc. (Hygen) listing himself as "a duly authorized officer of Life  
23 Wellness Pharmacy, Inc." Respondent was not an officer of Life Wellness Pharmacy and was not  
24 authorized by Life Wellness Pharmacy to open an account with Hygen. Respondent ordered  
25 pharmaceutical drugs from Hygen under Life Wellness Pharmacy's name and had them  
26 delivered to himself at Life Wellness Pharmacy.

27 b. During that time period, Respondent ordered Hydrocodone and Xanax along with  
28

1 numerous other drugs without the knowledge or authorization of the owner of Life Wellness  
2 Pharmacy and Respondent kept the drugs for his own use. Respondent ordered and took  
3 approximately 80,000 pills of Hydrocodone, 20,000 pills of Xanax, numerous ibuprofen pills and  
4 numerous other pharmaceutical drugs.

5 c. The owner of Life Wellness Pharmacy confronted Respondent regarding the  
6 drugs that were ordered and missing. Respondent admitted to ordering an unknown amount of  
7 Hydrocodone, Baclofen, and Lamisil without Life Wellness Pharmacy's authorization and  
8 without paying for them.

9 d. The owner of Life Wellness Pharmacy reported the theft to the police. A search  
10 warrant was issued for Respondent's house and the police found 82 pills of alprazolam, over  
11 4,500 800 mg and 400 mg Ibuprofen pills along with numerous new and opened bottles and bags  
12 of other drugs. Police also found invoices from ParMed, another wholesale pharmaceutical  
13 company, for large quantities of Hydrocodone.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Possession of a Controlled Substance Without A Prescription)**

16 21. Respondent is subject to disciplinary action under Code section 4301(j) in  
17 conjunction with Code section 4060 and H&S Code section 11350(a) for possession of  
18 controlled substances without a legitimate prescription, as more particularly alleged in paragraph  
19 20 above and incorporated herein by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)**

22 22. Respondent is subject to disciplinary action under Code section 4301(j) in  
23 conjunction with Code section 4059(a) and H&S Code section 11170 for illegally furnishing  
24 controlled substances to himself, as more particularly alleged in paragraph 20 above and  
25 incorporated herein by reference.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)**

28 23. Respondent is subject to disciplinary action under Code section 4301(j) in

1 conjunction with H&S Code section 11173 for obtaining controlled substances by fraud, deceit,  
2 subterfuge or concealment of a material fact, as more particularly alleged in paragraph 20 above  
3 and incorporated herein by reference.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(July 10, 2008 Criminal Conviction - Use of Personal Information of Another and**  
6 **Possession for Sale of Controlled Substances on February 28, and April 9, 2008 )**

7 24. Respondent is subject to disciplinary action under Code sections 490 and 4301(l)  
8 for conviction of a crime substantially related to the qualifications, functions, or duties of a  
9 pharmacy technician, as more particularly alleged below:

10 a. On or about July 10, 2008, in San Diego County Superior Court Case No.  
11 CN244057, Respondent pled guilty to a violation of Penal Code section 530.5(a) (use of personal  
12 identifying information of another) and Health and Safety Code section 11375(b)(1) (possession  
13 for sale of designated controlled substance).

14 b. The facts and circumstances surrounding the conviction are that on or about  
15 February 28, 2008, Respondent used personal identifying information of the pharmacist he  
16 worked for and completed a wholesaler application form with Hygen listing himself as a duly  
17 authorized officer of Life Wellness Pharmacy, Inc. Respondent was not an officer of Life  
18 Wellness Pharmacy and was not authorized by Life Wellness Pharmacy to open an account with  
19 Hygen. Respondent ordered pharmaceutical drugs from Hygen under Life Wellness Pharmacy's  
20 name and had them delivered to himself at Life Wellness Pharmacy. Additionally, on or about  
21 April 9, 2008, the police executed a search warrant on Respondent's home and found a  
22 substantial amount of dangerous drugs, including 82 tablets of alprazolam, as more particularly  
23 alleged in paragraph 20 above and incorporated herein by reference.

24 c. Respondent was sentenced to serve 210 days in jail, placed on formal probation  
25 for three years and ordered to pay various fines and restitution.

26 **SIXTH CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct-Possession for Sale of A Controlled Substance on April 9, 2008 )**

28 25. Respondent is subject to disciplinary action under Code sections 4301(j) in

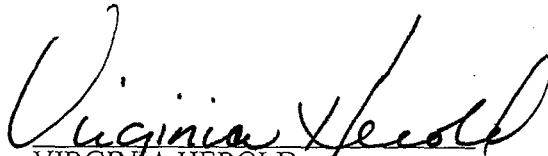
1 conjunction with H&S Code section 11375(b)(1) for possession for sale of a controlled  
2 substance, in that on or about July 10, 2008, Respondent pled guilty to possession for sale of a  
3 controlled substance, 82 pills of alprazolam, as more particularly alleged in paragraphs 20 and 24  
4 above and incorporated herein by reference.

5 PRAYER

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 31717,  
9 issued to Christopher D. Vargas;
- 10 2. Ordering Christopher D. Vargas to pay the Board of Pharmacy the reasonable  
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
12 Code section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 10/10/09

15  
16   
17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

22 SD2009804033  
23 70209157.wpd  
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**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**  
(Separate Mailings)

RECEIVED MAIL CALIF.  
BOARD OF PHARMACY

2009 OCT 21 AM 8:27

Case Name: In the Matter of the Accusation Against Christopher D. Vargas

No.: 3359

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 October 16, 2009, I served the attached **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11057.6 and 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; Copy of Government Code sections 11507.5, 11057.6 and 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 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Christopher D. Vargas  
2036 Crosscreek Road  
Chula Vista, CA 91913

Courtesy copies via 1st class mail only to:

**Certified Article Number**

7160 3901 9848 5024 5570

**SENDER'S RECORD**

Christopher D. Vargas  
462 Avenida Gabriel  
Chula Vista, CA 91914



Virginia K. Herold  
Executive Officer  
Helen Meeks-Lawson  
Enforcement Technician  
Board of Pharmacy  
1625 North Market Blvd., Suite N-219  
Sacramento, CA 95834

**Certified Article Number**

7160 3901 9848 5024 5563

**SENDER'S 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 October 16, 2009, at San Diego, California.

D. Hosman

Declarant

Signature

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 RITA M. LANE  
Deputy Attorney General  
4 State Bar No. 171352  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2614  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3359

12 **CHRISTOPHER D. VARGAS**

**STATEMENT TO RESPONDENT**

13 Respondent. [Gov. Code §§ 11504, 11505(b)]  
14

15  
16 TO RESPONDENT:

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

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

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

27 ///

28 ///

1 Rita M. Lane  
2 Deputy Attorney General  
3 110 West "A" Street, Suite 1100  
4 San Diego, California 92101

5  
6 P.O. Box 85266  
7 San Diego, California 92186-5266

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

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

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

15 The hearing may be postponed for good cause. If you have good cause, you are obliged to  
16 notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, CA  
17 92101, within ten (10) working days after you discover the good cause. Failure to notify the  
18 Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

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

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

#### 24 NOTICE REGARDING STIPULATED SETTLEMENTS

25 It may be possible to avoid the time, expense and uncertainties involved in an  
26 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated  
27 settlement is a binding written agreement between you and the government regarding the matters  
28 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.

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

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

8

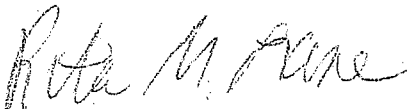
9 Dated: October 16, 2009

EDMUND G. BROWN JR.  
Attorney General of California  
LINDA K. SCHNEIDER  
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RITA M. LANE  
Deputy Attorney General  
*Attorneys for Complainant*

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of the State of California  
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10 **BEFORE THE**  
**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 3359

14 CHRISTOPHER D. VARGAS  
2036 Crosscreek Road  
15 Chula Vista, CA 91913

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

16 462 Avenida Gabriel  
Chula Vista, CA 91914

17 Pharmacy Technician Registration  
18 No. TCH 31717

19 Respondent.  
20

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about December 3, 1999, the Board of Pharmacy issued Pharmacy  
26 Technician Registration Number TCH 31717 to Christopher D. Vargas (Respondent). The  
27 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
28 brought herein and will expire on June 30, 2011, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws of the Business and Professions  
4 Code:

5 4. Section 4300(a) of the Code states in pertinent part:

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

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

10 STATUTORY PROVISIONS

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

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

16 .....

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

20 .....

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

23 .....

24 (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of  
26 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
27 United States Code regulating controlled substances or of a violation of the  
28 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

1 or when an order granting probation is made suspending the imposition of  
2 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
3 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.

4 7. Section 4059 of the Code states:

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

7 . . . .

8 8. Section 4060 of the Code states:

9 No person shall possess any controlled substance, except that furnished to  
10 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
11 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  
12 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or  
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
13 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.  
This section shall not apply to the possession of any controlled substance by a  
14 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
15 practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

16 Nothing in this section authorizes a certified nurse-midwife, a nurse  
17 practitioner, a physician assistant, or a naturopathic doctor, to order his or her  
own stock of dangerous drugs and devices.

18 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
19 revoke a license on the ground that the licensee has been convicted of a crime  
20 substantially related to the qualifications, functions, or duties of the business or profession for  
21 which the license was issued.

22 10. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by  
24 a board within the department pursuant to law to deny an application for a license  
or to suspend or revoke a license or otherwise take disciplinary action against a  
25 person who holds a license, upon the ground that the applicant or the licensee has  
been convicted of a crime substantially related to the qualifications, functions,  
26 and duties of the licensee in question, the record of conviction of the crime shall  
be conclusive evidence of the fact that the conviction occurred, but only of that  
27 fact, and the board may inquire into the circumstances surrounding the  
commission of the crime in order to fix the degree of discipline or to determine if  
28 the conviction is substantially related to the qualifications, functions, and duties  
of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit,"  
2 "authority," and "registration."

3 11. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall  
4 prescribe, administer, or furnish a controlled substance for himself."

5 12. H&S Code section 11173 states in pertinent part that no person shall obtain a  
6 controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

7 13. H&S Code section 11350(a) states in pertinent part that:

8 Except as otherwise provided in this division, every person who possesses  
9 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1)  
10 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
11 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
12 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
substance classified in Schedule III, IV, or V which is a narcotic drug, unless  
upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
licensed to practice in this state, shall be punished by imprisonment in the state  
prison.

13 14. H&S Code section 11375(b)(1) states in pertinent part that:

14 Every person who possesses for sale, or who sells, any substance specified  
15 in subdivision (c) shall be punished by imprisonment in the county jail for a  
16 period of not more than one year or state prison.

#### 17 **REGULATORY PROVISIONS**

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

19 For the purpose of denial, suspension, or revocation of a personal or  
20 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
21 business and Professions Code, a crime or act shall be considered substantially  
22 related to the qualifications, function 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 this license or registration in a  
manner consistent with the public health, safety, or welfare.

#### 23 **COST RECOVERY**

24 16. Section 123.5 provides that the Board may request the administrative law judge to  
25 direct any licentiate found to have committed a violation or violations of the licensing act to  
26 pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the  
27 case, including charges imposed by the Attorney General. Under section 125.3(c), a certified  
28 copy of the actual costs or a good faith estimate of costs where actual costs are not available,

1 numerous other drugs without the knowledge or authorization of the owner of Life Wellness  
2 Pharmacy and Respondent kept the drugs for his own use. Respondent ordered and took  
3 approximately 80,000 pills of Hydrocodone, 20,000 pills of Xanax, numerous ibuprofen pills and  
4 numerous other pharmaceutical drugs.

5 c. The owner of Life Wellness Pharmacy confronted Respondent regarding the  
6 drugs that were ordered and missing. Respondent admitted to ordering an unknown amount of  
7 Hydrocodone, Baclofen, and Lamisil without Life Wellness Pharmacy's authorization and  
8 without paying for them.

9 d. The owner of Life Wellness Pharmacy reported the theft to the police. A search  
10 warrant was issued for Respondent's house and the police found 82 pills of alprazolam, over  
11 4,500 800 mg and 400 mg Ibuprofen pills along with numerous new and opened bottles and bags  
12 of other drugs. Police also found invoices from ParMed, another wholesale pharmaceutical  
13 company, for large quantities of Hydrocodone.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Possession of a Controlled Substance Without A Prescription)**

16 21. Respondent is subject to disciplinary action under Code section 4301(j) in  
17 conjunction with Code section 4060 and H&S Code section 11350(a) for possession of  
18 controlled substances without a legitimate prescription, as more particularly alleged in paragraph  
19 20 above and incorporated herein by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)**

22 22. Respondent is subject to disciplinary action under Code section 4301(j) in  
23 conjunction with Code section 4059(a) and H&S Code section 11170 for illegally furnishing  
24 controlled substances to himself, as more particularly alleged in paragraph 20 above and  
25 incorporated herein by reference.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)**

28 23. Respondent is subject to disciplinary action under Code section 4301(j) in

1 conjunction with H&S Code section 11173 for obtaining controlled substances by fraud, deceit,  
2 subterfuge or concealment of a material fact. as more particularly alleged in paragraph 20 above  
3 and incorporated herein by reference.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (July 10, 2008 Criminal Conviction - Use of Personal Information of Another and  
6 Possession for Sale of Controlled Substances on February 28, and April 9, 2008 )

7 24. Respondent is subject to disciplinary action under Code sections 490 and 4301(l)  
8 for conviction of a crime substantially related to the qualifications, functions, or duties of a  
9 pharmacy technician, as more particularly alleged below:

10 a. On or about July 10, 2008, in San Diego County Superior Court Case No.  
11 CN244057, Respondent pled guilty to a violation of Penal Code section 530.5(a) (use of personal  
12 identifying information of another) and Health and Safety Code section 11375(b)(1) (possession  
13 for sale of designated controlled substance).

14 b. The facts and circumstances surrounding the conviction are that on or about  
15 February 28, 2008, Respondent used personal identifying information of the pharmacist he  
16 worked for and completed a wholesaler application form with Hygen listing himself as a duly  
17 authorized officer of Life Wellness Pharmacy, Inc. Respondent was not an officer of Life  
18 Wellness Pharmacy and was not authorized by Life Wellness Pharmacy to open an account with  
19 Hygen. Respondent ordered pharmaceutical drugs from Hygen under Life Wellness Pharmacy's  
20 name and had them delivered to himself at Life Wellness Pharmacy. Additionally, on or about  
21 April 9, 2008, the police executed a search warrant on Respondent's home and found a  
22 substantial amount of dangerous drugs, including 82 tablets of alprazolam. as more particularly  
23 alleged in paragraph 20 above and incorporated herein by reference.

24 c. Respondent was sentenced to serve 210 days in jail, placed on formal probation  
25 for three years and ordered to pay various fines and restitution.

26 **SIXTH CAUSE FOR DISCIPLINE**

27 (Unprofessional Conduct-Possession for Sale of A Controlled Substance on April 9, 2008 )

28 25. Respondent is subject to disciplinary action under Code sections 4301(j) in

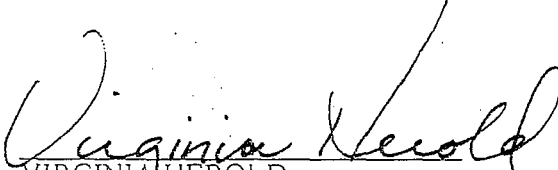
1 conjunction with H&S Code section 11375(b)(1) for possession for sale of a controlled  
2 substance, in that on or about July 10, 2008, Respondent pled guilty to possession for sale of a  
3 controlled substance, 82 pills of-alprazolam, as more particularly alleged in paragraphs 20 and 24  
4 above and incorporated herein by reference.

5 PRAYER

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 31717,  
9 issued to Christopher D. Vargas;
- 10 2. Ordering Christopher D. Vargas to pay the Board of Pharmacy the reasonable  
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
12 Code section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 10/10/09

15  
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17   
18 VIRGINIA HEROLD  
19 Executive Officer  
20 Board of Pharmacy  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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

In the Matter of the Accusation Against:

Case No. 3359

**CHRISTOPHER D. VARGAS**

Respondent.

**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 do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.



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

Counsel's Name \_\_\_\_\_

Counsel's Mailing Address \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

Counsel's Telephone Number \_\_\_\_\_

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

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

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

In the Matter of the Accusation Against:

**CHRISTOPHER D. VARGAS**

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Case No. 3359

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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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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3359

12 CHRISTOPHER D. VARGAS

**REQUEST FOR DISCOVERY**

13  
14 Respondent.

15 TO RESPONDENT:

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

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

- 23 1. Provide the names and addresses of witnesses to the extent known to the Respondent,  
24 including, but not limited to, those intended to be called to testify at the hearing, and  
25 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the  
26 following in the possession or custody or under control of the Respondent:  
27  
28

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

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

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

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

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

14 f. Investigative reports made by or on behalf of the Respondent pertaining  
15 to the subject matter of the proceeding, to the extent that these reports (1) contain the names  
16 and addresses of witnesses or of persons having personal knowledge of the acts, omissions  
17 or events which are the basis for the proceeding, or (2) reflect matters perceived by the  
18 investigator in the course of his or her investigation, or (3) contain or include by attachment  
19 any statement or writing described in (a) to (e), inclusive, or summary thereof.  
20

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

25  
26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery  
27 should be deemed to authorize the inspection or copying of any writing or thing which is  
28

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

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

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

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

**SECTION 11507.5: Exclusivity of discovery provisions**

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

**SECTION 11507.6: Request for discovery**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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