

1 BILL LOCKYER, Attorney General
of the State of California
2 MARETTA WARD, State Bar No. 176470
Deputy Attorney General
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6 Attorneys for Complainant

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

12 **In the Matter of the Accusation Against:**

13 **BARRY ALLAN LEVIN**

14 **Respondent.**

15 **Pharmacist License No. RPH 33153**

Case No. 2750

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16
17 **FINDINGS OF FACT**

18 1. On or about December 2, 2004, Complainant Patricia F. Harris, in her
19 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
20 Affairs, filed Accusation No. Case No. 2750 against Barry Allan Levin (Respondent) before the
21 Board of Pharmacy.

22 2. On or about August 14, 1979, the Board of Pharmacy (Board) issued
23 Pharmacist License No. 33153 to Respondent. The Pharmacist License expired on March 31,
24 2003, and has not been renewed.

25 3. On or about December 14, 2004, Anita L. Schurwon, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
27 Case No. 2750, Statement to Respondent, Notice of Defense, Request for Discovery, and
28 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record

1 with the Board, which was and is 81 Valley Street, San Francisco, CA 94110. A copy of the
2 Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are
3 incorporated herein by reference.

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

6 5. Business and Professions Code section 118 states, in pertinent part:

7 "(b) The suspension, expiration, or forfeiture by operation of law of a license
8 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
9 board or by order of a court of law, or its surrender without the written consent of the board, shall
10 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
11 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
12 any ground provided by law or to enter an order suspending or revoking the license or otherwise
13 taking disciplinary action against the license on any such ground."

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service
20 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
21 Accusation No. Case No. 2750.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board
28 finds Respondent is in default. The Board will take action without further hearing and, based on

1 Respondent's express admissions by way of default and the evidence before it, contained in
2 exhibits A finds that the allegations in Accusation No. Case No. 2750 are true.

3 **DETERMINATION OF ISSUES**

- 4 1. Based on the foregoing findings of fact, Respondent Barry Allan Levin has
5 subjected his Pharmacist License No. 33153 to discipline.
- 6 2. A copy of the Accusation and the related documents and Declaration of
7 Service are attached.
- 8 3. The agency has jurisdiction to adjudicate this case by default.
- 9 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist
10 License based upon the following violations alleged in the Accusation:

11 **ORDER**


12 **IT IS SO ORDERED** that Pharmacist License No. 33153, heretofore issued to
13 Respondent Barry Allan Levin, is revoked.

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

19 This Decision shall become effective on April 20, 2005.

20 It is so ORDERED March 21, 2005

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24
25 By 
26 STANLEY W. GOLDENBERG
27 Board President

24 40048452.wpd
25 DOJ docket number:SF2004400222

26 Attachments:
27 Exhibit A: Accusation No. Case No. 2750, Related Documents, and Declaration of Service

Exhibit A

Accusation No. Case No. 2750,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 MARETTA D. WARD, State Bar No. 176470
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5652
5 Facsimile: (415) 703-5480
6 Attorneys for Complainant

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

11 **In the Matter of the Accusation Against:**

Case No. 2750

12 **BARRY ALLEN LEVIN**
13 **81 Valley Street**
San Francisco, CA 94110

ACCUSATION

14 **Pharmacist License No. 33153**

15 **Respondent**

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer
21 Affairs.

22 2. On or about August 14, 1979, the Board of Pharmacy issued Pharmacist
23 License Number 33153 to Barry Allen Levin ("Respondent"). The Pharmacist License Number
24 33153 was in full force and effect at all times relevant to the charges brought herein and expired on
25 March 31, 2003.

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JURISDICTION

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3. This Accusation is brought before the Board, under the authority of the following laws.

4. Business and Professions Code section 118(b) provides that the suspension, expiration, surrender, and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Business and Professions Code section 4059(a) provides that no person shall furnish any dangerous drug except upon the prescription of a physician, dentists, podiatrist, optometrist or veterinarian.

6. Business and Professions Code section 4060 provides that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

7. Business and Professions Code section 4300(a) provides that every license may be suspended or revoked.

8. Business and Professions Code section 4301 states in relevant part that:
“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

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

“(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

“(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public,

1 or to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 ...

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

6 ...

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

11 “(p) Actions or conduct that would have warranted denial of a license.”

12 ...

13 9. Business and Professions Code section 4323 states:

14 “Every person who, in order to obtain any drug, falsely represents himself or herself
15 to be a physician or other person who can lawfully prescribe the drug, or falsely represents that he
16 or she is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or
17 electronic communication with a pharmacist, shall be punished by imprisonment in the county jail
18 for not more than one year.”

19 10. Business and Professions Code section 4324 states:

20 “(a) Every person who signs the name of another, or of a fictitious person, or
21 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any
22 prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by
23 imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

24 “(b) Every person who has in his or her possession any drugs secured by a forged
25 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the county
26 jail for not more than one year.”

27 11. Health and Safety Code section 11170 states that “[n]o person shall prescribe,
28 administer, or furnish a controlled substance for himself.”

1 12. Health and Safety Code section 11171 states that “[n]o person shall pres,
2 administer, or furnish a controlled substance except under the conditions and in the manner provided
3 by this division.”

4 13. Health and Safety Code section 11172 states that “[n]o person shall antedate
5 or postdate a prescription.”

6 14. Health and Safety Code section 11173 provides:

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

10 “(b) No person shall make a false statement in any prescription, order, report, or
11 record, required by this division.

12 “(c) No person shall, for the purpose of obtaining controlled substances, falsely
13 assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician,
14 dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.”

15 15. Health and Safety Code section 11368 provides:

16 “Every person who forges or alters a prescription or who issues or utters an altered
17 prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any
18 narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or
19 who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall
20 be punished by imprisonment in the county jail for not less than six months nor more than one year,
21 or in the state prison.”

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

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CONTROLLED SUBSTANCES/DANGEROUS DRUGS

17. Business and Professions Code section 4021 defines the term “Controlled Substance” as “any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

18. Business and Professions Code section 4022 defines the term “dangerous drug” as “any drug . . . unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following: . . . [a]ny drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import....”

19. **Oxycontin[®]** is a brand name for **oxycodone** a Schedule II controlled substances as designated by Health and Safety Code section 11055 and is a dangerous drugs under Business and Professions Code section 4022 and is used for pain relief.

20. **Adderall[®]** is a brand name for **amphetamine mixed salts** a Schedule II controlled substance as designated by Health and Safety Code section 11055 and is a dangerous drug under Business and Professions Code section 4022 and is used for anti-hyperactivity.

21. **Norco[®]** is a brand name for **hydrocodone/acetaminophen** a Schedule III controlled substance as designated by Health and Safety Code section 11056 and is a dangerous drug under Business and Professions Code section 4022 and is used for pain relief.

22. **Soma[®]** is a brand name for **carisoprodol** and is a dangerous drug under Business and Professions section 4022 and is used as muscle relaxant.

23. **Fioricet[®]** is a brand name for **butalbital/acetaminophen** and is a dangerous drug under Business and Profession section 4022 and is used to treat migraines.

FACTUAL BACKGROUND

24. On or about July 2001 through January 2003 respondent was employed as a pharmacist at Statscript Pharmacy then located at 2275 Market Street, Suite A, San Francisco, California.

25. During his employment at the pharmacy, respondent was treating with at least two physicians who, as part of respondent’s treatment, prescribed controlled substances and

1 dangerous drugs to respondent. On several occasions with an order from an actual physician,
2 Respondent filled his own prescriptions at his place of employment.

3 26. On or about July 2002 through December 2002, the respondent was observed
4 by his supervisor to be exhibiting certain behaviors such as memory lapses, chronic tardiness to
5 work, and signs of fatigue which were uncommon for respondent.

6 27. On or about December 2002 respondent's supervisor noticed a discrepancy
7 in the narcotics log. Further investigation of the discrepancy revealed that respondent had filled
8 multiple prescriptions for dangerous drugs and controlled substances without an authorized
9 prescription from a physician. Original triplicates for the prescriptions could not be found. Upon
10 contacting the physicians who allegedly issued the suspicious prescriptions to respondent, it was
11 determined that neither had authorized the issuance of drugs. The discrepancies noted from the first
12 doctor were as follows:

- 13 a. 1/05/02 Adderall 20 mg
- 14 b. 6/25/02 generic Adderall 30mg
- 15 c. 8/30/02 generic Adderall 30mg
- 16 d. 10/10/02 generic Adderall 30mg
- 17 e. 10/10/02 Oxycontin C/R 20mg
- 18 f. 12/16/02 Oxycontin C/R 20mg

19 28. Additional discrepancies from the second physician were as follows:

- 20
- 21 a. 8/01/01 Fioricet
- 22 b. 8/01/01 Carisoprodol 350mg
- 23 c. 9/15/01 Carisoprodol 350mg
- 24 d. 11/01/01 Carisoprodol 350mg
- 25 e. 1/11/02 Carisoprodol 350mg
- 26 f. 2/12/02 Carisoprodol 350mg
- 27 g. 3/13/02 Carisoprodol 350mg
- 28 h. 3/29/02 Carisoprodol 350mg

- 1 J. 4/27/02 Carisoprodol 350mg
- 2 k. 5/31/02 Carisoprodol 350mg
- 3 l. 11/09/01 Hydrocodone/APAP 10/325mg
- 4 m. 9/15/01 Hydrocodone/APAP 10/325mg
- 5 n. 1/19/02 Hydrocodone/APAP 10/325mg
- 6 o. 11/09/01 Butalbital/APAP/Caffeine 50/353/40mg
- 7 p. 3/29/02 Butalbital/APAP/Caffeine 50/353/40mg
- 8 q. 3/29/02 Hydrocodone/APAP 10/325mg
- 9 r. 5/18/02 Butalbital/APAP/Caffeine 50/353/40mg
- 10 s. 8/27/02 Butalbital/APAP/Caffeine 50/353/40mg
- 11 t. 10/10/02 Butalbital/APAP/Caffeine 50/353/40mg

12 Respondent filled the noted prescriptions without a prescription from either of his physicians
 13 and without obtaining triplicates from his physicians.

14 **FIRST CAUSE FOR DISCIPLINE**

15 29. Respondent is subject to disciplinary action under Code section 4301,
 16 unprofessional conduct, for the violation of section 11170 and section 11171 of the Health and
 17 Safety Code, in that respondent furnished controlled substances and dangerous drugs to himself,
 18 to wit, Adderal, Oxycontin, Fiorcet, Carisoprodol, Hydrocodone and Butalbital, to himself without
 19 authorized prescriptions from a physician as set forth fully in paragraphs 27 and 28, above.

20 **SECOND CAUSE FOR DISCIPLINE**

21 30. Respondent is subject to disciplinary action under Code section 4301,
 22 unprofessional conduct, for the violation of section 11172 of the Health and Safety Code, in that
 23 respondent antedated or postdated a prescription. The circumstances are as follows:

24 a. On or about May 18, 2002, respondent filled prescription No. 21789 for
 25 generic Adderall without benefit of a valid triplicate prescription. The triplicate prescription was
 26 received on or about May 25, 2002.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 31. Respondent is subject to disciplinary action under Code section 4301,
3 unprofessional conduct, for the violation of section 11173 of the Health and Safety Code, in that
4 respondent furnished controlled substances and dangerous drugs to himself by falsifying
5 prescription records and making false statements regarding those prescriptions as set forth in
6 paragraph 27 and 28, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 32. Respondent is subject to disciplinary action under Code section 4301,
9 unprofessional conduct, for the violation of section 4059 of the Code, in that respondent
10 furnished dangerous drugs to himself without prescriptions from a physician as set forth in
11 paragraph 27 and 28, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 33. Respondent is subject to disciplinary action under Code section 4301,
14 unprofessional conduct, for the violation of section 11368 of the Health and Safety Code, in that
15 respondent furnished dangerous drugs to himself without prescriptions from a physician as set
16 forth in paragraphs 27 and 28, above.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 34. Respondent is subject to disciplinary action under Code section 4301,
19 unprofessional conduct, for the violation of section 4060 of the Code, in that respondent
20 possessed controlled substances and dangerous drugs without a valid prescription as set forth in
21 paragraphs 26, 27 and 28, above.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 35. Respondent is subject to disciplinary action under Code section 4301,
24 unprofessional conduct, for the violation of section 4323 and section 4324 of the Code, in that
25 respondent made false representations in order to dispense and possess dangerous drugs for
26 himself without prescriptions from a physician as set forth in paragraphs 27 and 28, above.

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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 License Number 33153, issued to Barry Allen Levin;
2. Ordering Barry Allen Levin to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/2/04



PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

03583110-SF2004400056
40036814.wpd
lsw - 06/03/04

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

In the Matter of the Accusation Against: Barry Allen Levin

Agency Case No. 2750

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 December 14, 2004, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

Barry Allen Levin
81 Valley Street
San Francisco, CA 94110

Certified Article Number

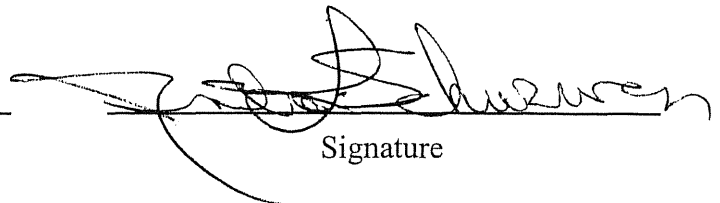
7160 3901 9848 5185 3842

SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 14, 2004, at San Francisco, California.

ANITA L. SCHURWON

Typed Name



Signature

1 BILL LOCKYER, Attorney General
of the State of California
2 MARETTA WARD, State Bar No. 176470
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. Case No. 2750

12 BARRY ALLAN LEVIN

STATEMENT TO RESPONDENT

13 Respondent.

[Gov. Code §§ 11504, 11505(b)]

14
15 TO RESPONDENT:

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

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

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

26 **Maretta Ward**
27 **Deputy Attorney General**
28 **455 Golden Gate Avenue, Suite 11000**
San Francisco, California 94102.

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

In the Matter of the Accusation Against:

BARRY ALLAN LEVIN

Respondent.

Case No. Case No. 2750

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

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

In the Matter of the Accusation Against:

BARRY ALLAN LEVIN

Respondent.

Case No. Case No. 2750

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

**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.

1 BILL LOCKYER, Attorney General
of the State of California
2 MARETTA WARD, State Bar No. 176470
Deputy Attorney General
3 California Department of Justice
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Telephone: (415) 703-1384
5 Facsimile: (415) 703-5480
6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:	Case No. Case No. 2750
11 BARRY ALLAN LEVIN	REQUEST FOR DISCOVERY
12 Respondent.	[Gov. Code § 11507.6]

13
14 TO RESPONDENT:

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

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

- 21 1. Provide the names and addresses of witnesses to the extent known to the
22 Respondent, 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
24 the 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
28 proceeding;

1 b. A statement pertaining to the subject matter of the proceeding made by any
2 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 to
12 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,
14 omissions or events which are the basis for the proceeding, or (2) reflect matters
15 perceived by the investigator in the course of his or her investigation, or (3) contain or
16 include by attachment any statement or writing described in (a) to (e), inclusive, or
17 summary thereof.

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

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

26 Your response to this Request for Discovery should be directed to the undersigned
27 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
28 **30 days after service** of the Accusation.

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

DATED: 12/13/04

BILL LOCKYER, Attorney General
of the State of California



MARETTA WARD
Deputy Attorney General

Attorneys for Complainant

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