

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANE M. L. TAN, State Bar No. 86571
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
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Telephone: (213) 897-8764
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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. 2772

12 **CINDY DIANNE MORALES,**
13 **aka Cindy Diane Velez**
635 Kippy Drive
Colton, CA 92324

DEFAULT DECISION
AND ORDER

(Gov. Code, §11520)

14 Pharmacy Technician Registration
15 No. TCH 13477,

16 Respondent.
17

18
19 **FINDINGS OF FACT**

20 1. On January 26, 2005, Complainant, Patricia F. Harris, in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
22 State of California, filed an Accusation in Case No. 2772 against Cindy Dianne Morales, aka
23 Cindy Diane Velez ("Respondent") before the Board of Pharmacy.

24 2. On July 21, 1994, the Board of Pharmacy ("the Board") issued Original
25 Pharmacy Technician Registration No. TCH 13477 to Respondent. Respondent's pharmacy
26 technician registration has been valid at all times relevant to the charges brought herein and will
27 expire on February 28, 2006, unless such registration is renewed.

28 3. On February 4, 2005, Rebeca Garcia, an employee of the Office of the

1 Attorney General of the California Department of Justice, served by Certified Mail and First
2 Class Mail on Respondent a copy of the Accusation in Case No. 2772, Statement to Respondent,
3 Notice of Defense, Request for Discovery, and a copy of Government Code sections 11507.5,
4 11507.6, and 11507.7 at Respondent's address of record with the Board, which was and is: 635
5 Kippy Drive, Colton, CA 92324. A copy of the Accusation, the related documents, Declaration
6 of Service, and Certified Mail Receipts are attached hereto as "Exhibit 1," and incorporated
7 herein by reference.

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

10 5. Government Code section 11506 states, in pertinent part, as follows:

11 "(c) The respondent shall be entitled to a hearing on the merits if the
12 respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
14 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant
15 a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all
16 objections to the form of the accusation shall be deemed waived."

17 6. Respondent failed to file a Notice of Defense within fifteen (15) days after
18 service upon her of the Accusation, and therefore waived her right to a hearing on the merits of
19 the Accusation in Case No. 2772.

20 7. Government Code section 11520 states, in pertinent part, as follows:

21 "(a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions or upon
23 other evidence and affidavits may be used as evidence without any notice to respondent; and
24 where the burden of proof is on the respondent to establish that the respondent is entitled to the
25 agency action sought, the agency may act without taking evidence."

26 8. Pursuant to the Board's authority under Government Code section 11520,
27 the Board finds Respondent is in default. The Board will take action without a hearing. Based
28 upon Respondent's express admissions by way of default and the evidence before the Board as

1 contained in Exhibit 1, the Board finds that all of the charges and allegations in the Accusation in
2 Case No. 2772 are true.

3 9. The total amount of the costs for enforcement in this matter is \$4,680.50
4 as of April 11, 2005. There were no investigation costs.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Cindy Dianne
7 Morales has subjected her Pharmacy Technician Registration No. TCH 13477 to discipline.

8 2. A copy of the Accusation in Case No. 2772, the related documents,
9 Declaration of Service, and Certified Mail Receipts are attached hereto.

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

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

13 a. **First Cause for Discipline:** Sections 4300 [disciplinary action], 4301,
14 subdivision (l) [convictions of crimes], and 490 [convictions of crimes] of the Business and
15 Professions Code ("the Code"), in conjunction with California Code of Regulations, title 16,
16 section 1770 [substantial relationship criteria re a crime or act and the qualifications, functions or
17 duties of a licensee] for having two felony convictions in September 2000, for violating Health
18 and Safety Code section 11379.6, subdivision (a) (manufacturing a controlled
19 substance—Methamphetamine);

20 b. **Second Cause for Discipline:** Sections 4300 [disciplinary action] and
21 4301, subdivision (j) [violation of statute regulating controlled substances] of the Code;

22 c. **Third Cause for Discipline:** Sections 4300 [disciplinary action] and
23 4301, subdivisions (h) [administered or furnished a controlled substance and dangerous drug to
24 herself] and (j) [violation of statute regulating controlled substances], in conjunction with Health
25 and Safety Code section 11170 and section 4022 of the Code; and

26 d. **Fourth Cause for Discipline:** Sections 4300 [disciplinary action] and
27 4301, subdivision (o) [violation of the Pharmacy Law].

28 A penalty consideration in this matter is that in March 1989, Respondent was

1 convicted pursuant to a plea of guilty to one count of violating Penal Code section 488 (petty
2 theft).

3 **ORDER**

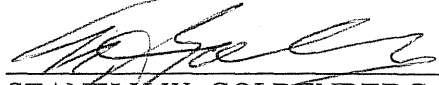
4 **IT IS ORDERED** that Pharmacy Technician Registration No. TCH 13477,
5 heretofore issued to Respondent Cindy Dianne Morales, is revoked.

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

11 This Decision shall become effective on June 3, 2005.

12 **IT IS SO ORDERED** on May 4, 2005.

13
14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA

17 By 
18 STANLEY W. GOLDENBERG
19 Board President

20 Attachments:

21 Exhibit 1: Accusation in Case No.2772, Related Documents, Declaration of Service, and
22 Certified Mail Receipts

23 DOJ docket number: 03583110-LA2004600699
24 morales cindy-default decision.wpd

Exhibit 1

**Accusation, Related Documents,
Declaration of Service, and Certified Mail Receipts**
Case No. 2772

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANE M. L. TAN, State Bar No. 86571
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-8764
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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. 2772

12 **CINDY DIANNE MORALES,**
aka Cindy Diane Velez
13 635 Kippy Drive
Colton, CA 92324

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 13477,

16 Respondent.

17
18 Complainant, Patricia F. Harris, Executive Officer of the California State Board of
19 Pharmacy, alleges as follows:

20 **PARTIES**

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

24 2. On or about July 21, 1994, the Board of Pharmacy issued Original
25 Pharmacy Technician Registration No. TCH 13477 to Cindy Dianne Morales, aka Cindy Diane
26 Velez ("Respondent"). Respondent's pharmacy technician registration has been valid at all times
27 relevant to the charges brought herein and will expire on or about February 28, 2006, unless such
28 registration is renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (“the Board”),
3 Department of Consumer Affairs, State of California, under the authority of the following laws
4 and regulations. All statutory references are to the Business and Professions Code (“the Code”),
5 unless otherwise indicated.

6 4. Section 4300 of the Code authorizes the Board to take disciplinary action
7 to suspend or revoke a license issued by the Board.

8 5. Section 490 of the Code states the following:

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

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

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

23 ...

24 “(h) The administering to oneself, of any controlled substance, or the use of any
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
26 injurious to oneself, to a person holding a license under this chapter [Chapter 9 (commencing
27 with section 4000 of the Code)], or to any other person or to the public, or to the extent that the
28 use impairs the ability of the person to conduct with safety to the public the practice authorized

1 by the license.

2 ...

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

5 ...

6 “(l) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter [Chapter 9 (commencing with section 4000
8 of the Code)]. The record of conviction of a violation of Chapter 13 (commencing with Section
9 801) of Title 21 of the United States Code regulating controlled substances or of a violation of
10 the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive
11 evidence of unprofessional conduct. In all other cases, the record of conviction shall be
12 conclusive evidence only of the fact that the conviction occurred. The board may inquire into the
13 circumstances surrounding the commission of the crime, in order to fix the degree of discipline
14 or, in the case of a conviction not involving controlled substances or dangerous drugs, to
15 determine if the conviction is of an offense substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a
17 plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The
18 board may take action when the time for appeal has elapsed, or the judgment of conviction has
19 been affirmed on appeal or when an order granting probation is made suspending the imposition
20 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
21 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
22 the verdict of guilty, or dismissing the accusation, information, or indictment.

23 ...

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

28 7. California Code of Regulations, title 16, section 1770, states as follows:

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

7 8. Section 118, subdivision (b) of the Code states as follows:

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

15 9. Health and Safety Code section 11379.6, subdivision (a), states the
16 following:

17 “Except as otherwise provided by law, every person who manufactures,
18 compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by
19 chemical extraction or independently by means of chemical synthesis, any controlled substance
20 specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment in
21 the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars
22 (\$50,000).”

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

25 11. Section 4022 of the Code prohibits the dispensing or furnishing of a
26 dangerous drug, which is any drug that is unsafe for self-use, except veterinary drugs that are
27 labeled as such, without a prescription or as legally authorized.

28 12. Section 125.3, subdivision (a), states, in pertinent part, as follows:

1 "Except as otherwise provided by law, in any order issued in resolution of a
2 disciplinary proceeding before any board within the department . . . , the board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case."

6 13. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

7 a. "Methamphetamine" is a Schedule II controlled substances as defined
8 under Health and Safety Code section 11055, subdivision (d)(2), and categorized as a dangerous
9 drug pursuant to Business and Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Convictions of Crimes)

12 14. Respondent, Cindy Dianne Morales, aka Cindy Diane Velez, is subject to
13 discipline pursuant to Business and Professions Code sections 4300, 4301, subdivision (l), and
14 490, in conjunction with California Code of Regulations, title 16, section 1770. Respondent
15 engaged in unprofessional conduct by having convictions of crimes that are substantially related
16 to the qualifications, functions or duties of a pharmacy technician. On or about September 5,
17 2000, Respondent was convicted of the following crimes:

18 a. On or about September 5, 2000, Respondent was convicted pursuant to a
19 plea of guilty to one count of violating Health and Safety Code section 11379.6, subdivision (a)
20 (manufacturing a controlled substance—Methamphetamine), a felony, in the Superior Court of
21 California, County of San Bernardino, San Bernardino District, Case No. FSB026541, in the
22 criminal proceeding entitled, *The People of the State of California v. Cindy Diane Velez*. The
23 circumstances regarding this conviction are that on or about April 11, 2000, Respondent and
24 another person, who was on parole for drug violations, were arrested after a parole search at a
25 residence in Colton where Respondent was residing, for unlawfully manufacturing,
26 compounding, converting, producing, deriving, processing and preparing a controlled substance,
27 i.e., Methamphetamine. Respondent admitted to one of the arresting officers of the Colton Police
28 Department, that she had used methamphetamine earlier that day.

1 On or about October 6, 2000, the court ordered that probation be denied and
2 sentenced Respondent to State Prison for the low term of three years, with credit for time served
3 (138 actual + 69 conduct) for a total of 207 days.

4 b. On or about September 5, 2000, Respondent was convicted pursuant to a
5 plea of guilty to one count of violating Health and Safety Code section 11379.6, subdivision (a)
6 (manufacturing a controlled substance—Methamphetamine), a felony, in the Superior Court of
7 California, County of San Bernardino, San Bernardino District, Case No. FRE04020, in the
8 criminal proceeding entitled, *The People of the State of California v. Cindy Diane Velez*. The
9 circumstances regarding this conviction are that on or about April 25, 2000, Respondent was
10 arrested following a consented search of a residence in Redlands for unlawfully manufacturing,
11 compounding, converting, producing, deriving, processing and preparing Methamphetamine.
12 Respondent admitted to one of the arresting officers of the San Bernardino Police Department
13 that she was “cooking meth” in the kitchen of that residence; has manufactured
14 methamphetamine at least ten times; and has manufactured methamphetamine at that residence at
15 least five times.

16 On or about October 6, 2000, the court ordered that probation be denied and
17 sentenced Respondent to State Prison for the 1/3 midterm of 1 year and 8 months, with credit for
18 time served (135 actual + 67 conduct) for a total of 202 days. The court also ordered that the
19 sentence run consecutively to the sentence in Case No. FSB026541.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Violation of Statute Regulating Controlled Substances)

22 15. Respondent is subject to discipline pursuant to sections 4300 and 4301,
23 subdivision (j), for engaging in unprofessional conduct by violating Health and Safety Code
24 section 11379.6, subdivision (a), a statute regulating controlled substances, as described above in
25 Paragraph 14 of this Accusation, which is incorporated herein by reference.

26 **THIRD CAUSE FOR DISCIPLINE**

27 (Administered or Furnished a Controlled Substance and Dangerous Drug to Herself)

28 16. Respondent is subject to discipline pursuant to sections 4300 and 4301,

1 subdivisions (h) and (j), in conjunction with Health and Safety Code section 11170 and Business
2 and Professions Code section 4022, for administering or furnishing to herself methamphetamine,
3 a controlled substance and dangerous drug, as described above in Paragraph 14 of this
4 Accusation, which is incorporated herein by reference.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 (Violation of the Pharmacy Law)

7 17. Respondent is subject to discipline pursuant to sections 4300 and 4301,
8 subdivision (o), for engaging in unprofessional conduct by violating the pharmacy laws when she
9 committed acts as described above in Paragraphs 14 to 16 of this Accusation, which are
10 incorporated herein by reference.

11 **PENALTY CONSIDERATIONS**

12 18. On or about March 8, 1989, Respondent was convicted pursuant to a plea
13 of guilty to one count of violating Penal Code section 488 (petty theft), in the San Bernardino
14 County Municipal Court District, County of San Bernardino, State of California, Case No.
15 MO144273 (File No. MSB 50407), in the criminal proceeding entitled, *The People of the State of*
16 *California v. Cindy Diane Velez*. The circumstances regarding this conviction are that on or
17 about March 6, 1989, Respondent was arrested for burglary at a Mervyns in San Bernardino,
18 California. The court ordered that Respondent be imprisoned in the San Bernardino County Jail
19 for three days, with credit of three days for time served.

20 **PRAYER**

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

- 23 1. Revoking or suspending Pharmacy Technician Registration No. TCH
24 13477, issued to Cindy Dianne Morales;
- 25 2. Ordering Cindy Dianne Morales to pay the Board of Pharmacy the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and

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3. Taking such other and further action that is deemed necessary and proper.

DATED: 1/26/05

P. J. Harris

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

Complainant

DOJ Matter ID: LA2004600699
morales-cindy.accusation.wpd

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANE M. L. TAN, State Bar No. 86571
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-8764
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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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. 2772

12 CINDY DIANNE MORALES,

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
18 Pharmacy of the 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
20 or mailed to the Board, represented by Deputy Attorney General Diane M. L. Tan, within fifteen
21 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
22 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
23 the 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
25 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
26 in section 11506 of the Government Code, to

27 ///

28 ///

1 **Diane M. L. Tan**
2 **Deputy Attorney General**
3 **Ronald Reagan Building**
4 **300 South Spring Street, Suite 1702**
5 **Los Angeles, CA 90013.**

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

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

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

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

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

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

26 **NOTICE REGARDING STIPULATED SETTLEMENTS**

27 It may be possible to avoid the time, expense and uncertainties involved in an
28 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters
charged and the discipline to be imposed. Such a stipulation would have to be approved by the

1 Board of Pharmacy but, once approved, it would be incorporated into a final order.

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

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

9 *****

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

In the Matter of the Accusation Against:

CINDY DIANNE MORALES,

Respondent.

Case No. 2772

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:

CINDY DIANNE MORALES,

Respondent.

Case No. 2772

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

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2 DIANE M. L. TAN, State Bar No. 86571
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BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2772

12 CINDY DIANNE MORALES,

REQUEST FOR DISCOVERY

13 Respondent.

[Gov. Code § 11507.6]

14
15 TO RESPONDENT:

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

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

- 22 1. Provide the names and addresses of witnesses to the extent known to the
23 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
24 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
25 the following in the possession or custody or under control of the Respondent:
- 26 a. A statement of a person, other than the Respondent, named in the initial
27 administrative pleading, or in any additional pleading, when it is claimed that the act or
28 omission of the Respondent as to this person is the basis for the administrative

1 proceeding;

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

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

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

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

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

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

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

27 ///

28 ///

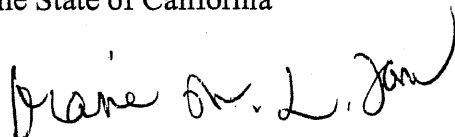
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Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

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

DATED: February 4, 2005

BILL LOCKYER, Attorney General
of the State of California



DIANE M. L. TAN
Deputy Attorney General

Attorneys for Complainant

50016552.wpd

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

SECTION 11507.5: Exclusivity of discovery provisions

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

SECTION 11507.6: Request for discovery

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

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

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

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

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

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

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

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

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

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

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

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

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

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

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

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

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **CINDY DIANE MORALES, a.k.a. CINDY DIANE VELEZ**

Case No.: **2772**

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 February 4, 2005, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2); REQUEST FOR DISCOVERY; 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 **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2); REQUEST FOR DISCOVERY; 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 Los Angeles, addressed as follows:

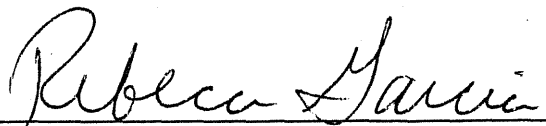
Cindy Diane Morales
635 Kippy Drive
Colton, CA 92324

CERTIFIED MAIL NO.
7001 2510 0009 2265 0622

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 February 4, 2005, at Los Angeles, California.

Rebeca Garcia

Declarant



Signature

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

7001 2510 0009 2265 0622

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Sent To		
Street, Apt. No., or PO Box No.	Cindy Diane Morales	
City, State, ZIP+4	635 Kippy Drive Colton, CA 92324	

PS Form 3800, January 2001

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cindy Diane Morales
 635 Kippy Drive
 Colton, CA 92324

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Leonardo Lopez* B. Date of Delivery *2-15-05*

C. Signature *[Signature]* Agent
 Addressee

D. Is delivery address different from item 1? Yes
 No
 If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

7001 2510 0009 2265 0622

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- A unique identifier for your mailpiece
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Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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PS Form 3800, January 2001 (Reverse)

102595-01-M-1049

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DAG Diane M. L. Tan
DEPARTMENT OF JUSTICE
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

Accusation Packet

DOJ Matter Identification No. 03583110-1A2004600699

Matter Against: Cindy Dianne Morales