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of the State of California
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3 California Department of Justice
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6 Telephone: (619) 645-2323
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7 Attorneys for Complainant
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9

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

12 In the Matter of the Accusation Against:

Accusation No. 2861

13 **BENNY MARGARET CARVAJAL**
aka B. Margaret Carvajal

14 4007 Darwin Avenue
15 San Diego, CA 92154

16 Pharmacy Technician Reg. No. TCH 25588

17 Respondent.
18

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about January 23, 2006, Complainant Patricia F. Harris, in her
21 official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2861
22 against Benny Margaret Carvajal (Respondent) before the Board of Pharmacy, Department of
23 Consumer Affairs (Board).

24 2. On or about April 22, 1998, the Board issued Pharmacy Technician
25 Registration No. TCH 25588 to Respondent. The Pharmacy Technician Registration was in full
26 force and effect at all times relevant to the charges brought herein and will expire on February
27 29, 2008, unless renewed.

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1 3. a. On or about January 25, 2006, M. Torres-Lopez, an employee of
2 the Department of Justice, served by Certified and First Class Mail a copy of Accusation No.
3 2861, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board
5 as of that date, which was 1375 Piedra Street, San Diego, CA 92154. A copy of the Accusation,
6 the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated
7 herein by reference.

8 b. On or about March 13, 2006, M. Torres-Lopez served by Certified
9 and First Class Mail a copy of Accusation No. 2861, Statement to Respondent, Notice of
10 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7
11 to Respondent's address of record with the Board, which was and is 4007 Darwin Avenue, San
12 Diego, CA 92154. A copy of the Accusation, the related documents, and Declaration of Service
13 are attached as Exhibit B, and are incorporated herein by reference.

14 4. On or about January 30, 2006, Return Receipt No. 7160 3901 9848 8027
15 8067 was returned to the Office of the Attorney General, indicating that delivery of the
16 documents referred to in paragraph 3(a), above, was made by the U.S. Postal Service. A copy of
17 Return Receipt No. 7160 3901 9848 8027 8067 is attached hereto as Exhibit C, and is
18 incorporated herein by reference.

19 5. On or about March 16, 2006, Return Receipt No. 7160 3901 9849 3220
20 2163 was returned to the Office of the Attorney General, indicating that delivery of the
21 documents referred to in paragraph 3(b), above, was made by the U.S. Postal Service. A copy of
22 Return Receipt No. 7160 3901 9849 3220 2163 is attached hereto as Exhibit D, and is
23 incorporated herein by reference.

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

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1 7. 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
5 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

6 8. Respondent failed to file a Notice of Defense within 15 days after service
7 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
8 Accusation No. 2861.

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

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

13 10. Pursuant to its authority under Government Code section 11520, the Board
14 of Pharmacy finds Respondent is in default. The Board will take action without further hearing
15 and, based on Respondent's express admissions by way of default and the evidence before it
16 contained in Exhibits A, B, C and D, finds that the allegations in Accusation No. 2861 are true.

17 11. The total costs for investigation and enforcement are \$ 4,595.50 as of
18 April 25, 2006, based on the Certification of Costs contained in Exhibit E.

19 **DETERMINATION OF ISSUES**

20 1. Based on the foregoing findings of fact, Respondent Benny Margaret
21 Carvajal has subjected her Pharmacy Technician Registration No. TCH 25588 to discipline.

22 2. A copy of the Accusation and the related documents and Declaration of
23 Service are attached.

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

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

3 a. Criminal Conviction of a Substantially Related Offense (Grand
4 Theft), pursuant to Business and Professions Code sections 490, 4301(l) and Title 16, California
5 Code of Regulations, section 1770 (First Cause for Discipline);

6 b. Commission of Acts Involving Moral Turpitude, Dishonesty,
7 Fraud, Deceit, or Corruption, pursuant to Business and Professions Code section 4301(f) (Second
8 Cause for Discipline);

9 c. Violation of Laws Regulating Controlled Substances and
10 Dangerous Drugs, pursuant to Business and Professions Code section 4301(j) (Third Cause for
11 Discipline); and,

12 d. Commission of Acts Which Would Have Warranted Denial of A
13 License, pursuant to Business and Professions Code sections 480 and 4301(p) (Fourth Cause for
14 Discipline).

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ORDER

IT IS SO ORDERED, that Pharmacy Technician Registration No. TCH 25588, heretofore issued to Respondent Benny Margaret Carvajal, is revoked. Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STANLEY W. GOLDENBERG
Board President

1 Attachments:

- 2 Exhibit A: Accusation No. 2861, Related Documents, and Declaration of Service 1/25/06
- 3 Exhibit B: Accusation No. 2861, Related Documents, and Declaration of Service 3/13/06
- 4 Exhibit C: Return Receipt No. 7160 3901 9848 8027 8067
- 5 Exhibit D: Return Receipt No. 7160 3901 9849 3220 2163
- 6 Exhibit E: Certification of Costs

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Exhibit A

Accusation No. 2861 (1/25/06)
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **BENNY MARGARET CARVAJAL**
aka B. MARGARET CARVAJAL
14 1375 Piedra Street
15 San Diego, California 92154
16 Pharmacy Technician Reg. No. TCH 25588
17 Respondent.

Accusation No. 2861
OAH No.
ACCUSATION

18
19 Complainant alleges:

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.
24 2. On or about April 22, 1998, the Board of Pharmacy issued Original
25 Pharmacy Technician Registration number TCH 25588 to B. Margaret Carvajal (Respondent).
26 The license was in full force and effect at all times relevant to the charges brought herein and will
27 expire on February 28, 2006, unless renewed.

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JURISDICTION

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

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

8 5. Section 4060 of the Code states, in pertinent part:

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

17 6. Section 4301 of the Code states:

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

22 "....

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

26 "....

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

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

"....

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective

1 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

2 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
3 substantially benefit himself or another, or substantially injure another; or

4 "(3) Done any act which if done by a licentiate of the business or profession in
5 question, would be grounds for suspension or revocation of license.

6 "The board may deny a license pursuant to this subdivision only if the crime or act
7 is substantially related to the qualifications, functions or duties of the business or profession for
8 which application is made."

9 8. Section 490 of the Code states:

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

19 9. Penal Code section 487(a) states:

20 "Grand theft is theft committed in any of the following cases:

21 "(a) When the money, labor, or real or personal property taken is of a value
22 exceeding four hundred dollars (\$ 400), except as provided in subdivision (b)."

23 10. Health and Safety Code section 11173(a) states:

24 "(a) No person shall obtain or attempt to obtain controlled substances, or procure
25 or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
26 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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1 11. California Code of Regulations, Title 16, section 1770, states:

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

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

12 13. **Drugs.**

13 Lortab is a Schedule III controlled substance under Health and Safety Code
14 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022(c),
15 and is used in the relief of pain.

16 **Criminal Conviction For Grand Theft of Controlled Substance - April 17, 2004**

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Conviction of a Substantially Related Criminal Offense)

19 14. Respondent is subject to disciplinary action under section 490, 4301(1),
20 and Title 16 of the California Code of Regulations, section 1770, in that Respondent has been
21 convicted of a crime which is substantially related to the qualifications, functions and duties of a
22 pharmacy assistant. The circumstances are as follows:

23 15. On or about April 17, 2004, in San Diego County Superior Court, Case
24 No. CD177861, entitled *People v. Benny Margaret Carvajal*, Respondent was convicted by the
25 court on her plea of guilty to Grand Theft, in violation of Penal Code section 487(a) (When value
26 of property stolen exceeds \$400.00), a misdemeanor.

27 16. On the basis of Respondent's plea described in paragraph 15, Respondent
28 was placed on summary probation for 3 years on terms and conditions which included an order

1 that Respondent serve one day in custody (suspended), pay approximately \$1300.00 in restitution
2 to the victim and \$400.00 in other fines, complete 52 hours of volunteer work and a shoplifting
3 course, stay away from the victim, Pharmacare/Pro-Care pharmacy, and obey all laws.

4 17. The circumstances of the crime as charged are that between January 1,
5 2002 and March 10, 2003, Respondent unlawfully obtained and procured the administration of
6 and prescription for a controlled substance, Lortab, by fraud, deceit, misrepresentation,
7 subterfuge and by concealment of a material fact, from her employer, Pharmacare/Pro-Care
8 pharmacy. A felony criminal complaint alleging violations of Health and Safety Code section
9 11173(a) (obtaining prescription by fraud/deceit) and Penal Code section 487(a) (grand theft of
10 personal property) was filed against Respondent on October 7, 2003.

11 SECOND CAUSE FOR DISCIPLINE

12 (Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 18. Respondent is subject to disciplinary action under section 4301(f) on the
14 grounds that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption, based upon the facts and circumstances set forth in the First Cause for Discipline.

16 Diversion of Controlled Substance - January, 2002 through March, 2003

17 THIRD CAUSE FOR DISCIPLINE

18 (Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

19 19. Respondent is subject to disciplinary action under section 4301(j), on the
20 grounds that she violated laws regulating controlled substances and dangerous drugs. The
21 circumstances are as follows: From approximately January, 2002 to March, 2003, while working
22 as a pharmacy technician at Pro-Care pharmacy, Respondent diverted approximately 2300 tablets
23 of Lortab, a schedule III narcotic, from the pharmacy without authorization, in violation of section
24 4060 and Health and Safety Code section 11173(a). One incident of Respondent's diversion was
25 caught on the pharmacy's surveillance camera. Respondent admitted taking approximately 200
26 Lortab tablets a week at random from the pharmacy during her employment, by concealing 100
27 count Lortab bottles in her clothes.

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FOURTH CAUSE FOR DISCIPLINE

(Commission of Acts Which Would Have Warranted Denial of a License)

20. Respondent is subject to disciplinary action under section 480 and 4301(p), on the grounds that she has engaged in actions or conduct that would have warranted denial of a license, based on the fact and circumstances set forth in the First, Second and Third Causes for Discipline.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration number TCH 25588, issued to Benny Margaret Carvajal;
2. Ordering Benny Margaret Carvajal 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/23/06

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

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
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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:

12 BENNY MARGARET CARVAJAL
13 aka B. MARGARET CARVAJAL

14 Respondent.

Accusation No. 2861

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

15
16
17 TO RESPONDENT:

18 Under section 11507.6 of the Government Code of the State of California, parties to
19 an administrative hearing, including the Complainant, are entitled to certain information concerning t
20 opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
21 concerning such rights is included among the papers served.

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

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

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

28 a. A statement of a person, other than the Respondent, named in the initial

1 administrative pleading, or in any additional pleading, when it is claimed that the act or
2 omission of the Respondent as to this person is the basis for the administrative
3 proceeding;

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

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

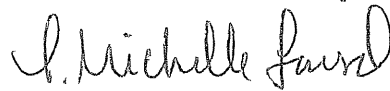
25 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
26 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
27 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
28 work product.

1 Your response to this Request for Discovery should be directed to the undersigned
2 attorney for the Complainant at the address on the first page of this Request for Discovery.

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

6 DATED: Jan. 25, 2006

7 BILL LOCKYER, Attorney General
8 of the State of California

9 

10 T. MICHELLE LAIRD
11 Deputy Attorney General

12 Attorneys for Complainant

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2 T. MICHELLE LAIRD, State Bar No. 162979
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

12 BENNY MARGARET CARVAJAL
13 aka B. MARGARET CARVAJAL

14 Respondent.

Accusation No. 2861

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

15
16 TO RESPONDENT:

17 Enclosed is a copy of the Accusation that has been filed with the Board of Pharmacy o
18 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 or
20 mailed to the Board, represented by Deputy Attorney General T. Michelle Laird, 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 form
25 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section
26 11506 of the Government Code, to

1 T. Michelle Laird
2 Deputy Attorney General
3 110 West "A" Street, Suite 1100
4 San Diego, California 92101

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

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

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

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

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

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

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

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

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

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Board of Pharmacy but, once approved, it would be incorporated into a final order.

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

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General T.
9 Michelle Laird at the earliest opportunity.

10 *****

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

In the Matter of the Accusation Against:

BENNY MARGARET CARVAJAL
aka B. MARGARET CARVAJAL

Respondent.

Accusation No. 2861

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 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.

80061673.wpd

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

In the Matter of the Accusation Against:

BENNY MARGARET CARVAJAL
aka B. MARGARET CARVAJAL

Respondent.

Accusation No. 2861

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 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.

80061673.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.

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

3 Case Name: In the Matter of the Accusation Against BENNY MARGARET CARVAJAL

4 Accusation No.: 2861

5 I declare:

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

13 On January 25, 2006, I served the attached **ACCUSATION; REQUEST FOR DISCOVERY;**
14 **STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT.**
15 **CODE SECTIONS 11507.5, 11507.6, AND 11507.7** by placing a true copy thereof enclosed in
16 a sealed envelope as certified mail with postage thereon fully prepaid and return receipt
17 requested, and another true copy of the **ACCUSATION; REQUEST FOR DISCOVERY;**
18 **STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT.**
19 **CODE SECTIONS 11507.5, 11507.6, AND 11507.7** was enclosed in a second sealed envelope
20 as first class mail with postage thereon fully prepaid, in the internal mail collection system at the
21 Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego,
22 CA 92186-5266, addressed as follows:

23 **BENNY MARGARET CARVAJAL**
24 **1375 Piedra Street**
25 **San Diego, CA 92154**

26 **Certified Article Number**

27 7160 3901 9848 8027 8067

28 **SENDERS RECORD**

29 I declare under penalty of perjury under the laws of the State of California the foregoing is true
30 and correct and that this declaration was executed on January 25, 2006, at San Diego, California.

31 M. Torres-Lopez

32 _____
33 Declarant

34 *M. Torres-Lopez*
35 _____
36 Signature

Exhibit B

Accusation No. 2861 (3/13/06)
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
P.O. Box 85266
5 San Diego, CA 92186-5266
6 Telephone: (619) 645-2323
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

13 **BENNY MARGARET CARVAJAL**
aka B. MARGARET CARVAJAL

14 4007 Darwin Avenue
15 San Diego, CA 92154

16 Pharmacy Technician Reg. No. TCH 25588

17 Respondent.

Accusation No. 2861

OAH No.

A C C U S A T I O N

18
19 Complainant alleges:

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.

24 2. On or about April 22, 1998, the Board of Pharmacy issued Original
25 Pharmacy Technician Registration number TCH 25588 to B. Margaret Carvajal (Respondent).
26 The license was in full force and effect at all times relevant to the charges brought herein and will
27 expire on February 28, 2006, unless renewed.

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JURISDICTION

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

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

5. Section 4060 of the Code states, in pertinent part:

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

6. Section 4301 of the Code states:

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

". . . .

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

". . . .

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

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

". . . .

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective

1 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

2 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
3 substantially benefit himself or another, or substantially injure another; or

4 "(3) Done any act which if done by a licentiate of the business or profession in
5 question, would be grounds for suspension or revocation of license.

6 "The board may deny a license pursuant to this subdivision only if the crime or act
7 is substantially related to the qualifications, functions or duties of the business or profession for
8 which application is made."

9 8. Section 490 of the Code states:

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

19 9. Penal Code section 487(a) states:

20 "Grand theft is theft committed in any of the following cases:

21 "(a) When the money, labor, or real or personal property taken is of a value
22 exceeding four hundred dollars (\$ 400), except as provided in subdivision (b)."

23 10. Health and Safety Code section 11173(a) states:

24 "(a) No person shall obtain or attempt to obtain controlled substances, or procure
25 or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
26 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

27 ///

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1 11. California Code of Regulations, Title 16, section 1770, states:

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

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

12 13. **Drugs.**

13 Lortab is a Schedule III controlled substance under Health and Safety Code
14 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022(c),
15 and is used in the relief of pain.

16 **Criminal Conviction For Grand Theft of Controlled Substance - April 17, 2004**

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Conviction of a Substantially Related Criminal Offense)

19 14. Respondent is subject to disciplinary action under section 490, 4301(I),
20 and Title 16 of the California Code of Regulations, section 1770, in that Respondent has been
21 convicted of a crime which is substantially related to the qualifications, functions and duties of a
22 pharmacy assistant. The circumstances are as follows:

23 15. On or about April 17, 2004, in San Diego County Superior Court, Case
24 No. CD177861, entitled *People v. Benny Margaret Carvajal*, Respondent was convicted by the
25 court on her plea of guilty to Grand Theft, in violation of Penal Code section 487(a) (When value
26 of property stolen exceeds \$400.00), a misdemeanor.

27 16. On the basis of Respondent's plea described in paragraph 15, Respondent
28 was placed on summary probation for 3 years on terms and conditions which included an order

1 that Respondent serve one day in custody (suspended), pay approximately \$1300.00 in restitution
2 to the victim and \$400.00 in other fines, complete 52 hours of volunteer work and a shoplifting
3 course, stay away from the victim, Pharmicare/Pro-Care pharmacy, and obey all laws.

4 17. The circumstances of the crime as charged are that between January 1,
5 2002 and March 10, 2003, Respondent unlawfully obtained and procured the administration of
6 and prescription for a controlled substance, Lortab, by fraud, deceit, misrepresentation,
7 subterfuge and by concealment of a material fact, from her employer, Pharmicare/Pro-Care
8 pharmacy. A felony criminal complaint alleging violations of Health and Safety Code section
9 11173(a) (obtaining prescription by fraud/deceit) and Penal Code section 487(a) (grand theft of
10 personal property) was filed against Respondent on October 7, 2003.

11 SECOND CAUSE FOR DISCIPLINE

12 (Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 18. Respondent is subject to disciplinary action under section 4301(f) on the
14 grounds that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption, based upon the facts and circumstances set forth in the First Cause for Discipline.

16 Diversion of Controlled Substance - January, 2002 through March, 2003

17 THIRD CAUSE FOR DISCIPLINE

18 (Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

19 19. Respondent is subject to disciplinary action under section 4301(j), on the
20 grounds that she violated laws regulating controlled substances and dangerous drugs. The
21 circumstances are as follows: From approximately January, 2002 to March, 2003, while working
22 as a pharmacy technician at Pro-Care pharmacy, Respondent diverted approximately 2300 tablets
23 of Lortab, a schedule III narcotic, from the pharmacy without authorization, in violation of section
24 4060 and Health and Safety Code section 11173(a). One incident of Respondent's diversion was
25 caught on the pharmacy's surveillance camera. Respondent admitted taking approximately 200
26 Lortab tablets a week at random from the pharmacy during her employment, by concealing 100
27 count Lortab bottles in her clothes.

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

2 (Commission of Acts Which Would Have Warranted Denial of a License)

3 20. Respondent is subject to disciplinary action under section 480 and
4 4301(p), on the grounds that she has engaged in actions or conduct that would have warranted
5 denial of a license, based on the fact and circumstances set forth in the First, Second and Third
6 Causes for Discipline.

7 PRAYER

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

10 1. Revoking or suspending Pharmacy Technician Registration number TCH
11 25588, issued to Benny Margaret Carvajal;

12 2. Ordering Benny Margaret Carvajal to pay the Board of Pharmacy the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3; and,

15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 1/23/06

18
19
20
21 P. J. Harris
22 PATRICIA F. HARRIS
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2323
Facsimile: (619) 645-2061
7

8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 BENNY MARGARET CARVAJAL
13 aka B. MARGARET CARVAJAL

14 Respondent.

Accusation No. 2861

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

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 T. Michelle Laird, 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 T. Michelle Laird
2 Deputy Attorney General
3 110 West "A" Street, Suite 1100
4 San Diego, California 92101

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

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

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

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

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

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

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

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

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

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Board of Pharmacy but, once approved, it would be incorporated into a final order.

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

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General T.
9 Michelle Laird at the earliest opportunity.

10 *****

11 SD2005700380
12 80061673.wpd

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1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2323
Facsimile: (619) 645-2061

7 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:

12 BENNY MARGARET CARVAJAL
13 aka B. MARGARET CARVAJAL

14 Respondent.
15

Accusation No. 2861

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

16
17 TO RESPONDENT:

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

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

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

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

28 a. A statement of a person, other than the Respondent, named in the initial

1 administrative pleading, or in any additional pleading, when it is claimed that the act or
2 omission of the Respondent as to this person is the basis for the administrative
3 proceeding;

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

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

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

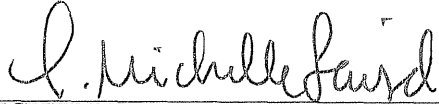
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Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery.

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: 3/13/06

BILL LOCKYER, Attorney General
of the State of California



T. MICHELLE LAIRD
Deputy Attorney General

Attorneys for Complainant

80061673.wpd

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

In the Matter of the Accusation Against:

BENNY MARGARET CARVAJAL
aka B. MARGARET CARVAJAL

Respondent.

Accusation No. 2861

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 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.

80061673.wpd

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

In the Matter of the Accusation Against:

BENNY MARGARET CARVAJAL
aka B. MARGARET CARVAJAL

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Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

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- 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.

80061673.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: In the Matter of the Accusation Against BENNY MARGARET CARVAJAL

Accusation No.: 2861

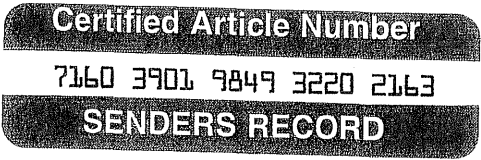
I declare:

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 March 13, 2006, I served the attached **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, 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 **ACCUSATION; REQUEST FOR DISCOVERY; STATEMENT TO RESPONDENT; NOTICE OF DEFENSE (2 copies); COPY OF GOVT. CODE SECTIONS 11507.5, 11507.6, 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:

B. MARGARET CARVAJAL
4007 Darwin Avenue
San Diego, CA 92154

Respondent in Pro Per



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 March 13, 2006, at San Diego, California.

M. Torres-Lopez

A handwritten signature in cursive script that reads "Marianna Torres Lopez".

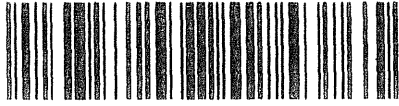
Declarant

Signature

Exhibit C

Return Receipt No. 7160 3901 9848 8027 8067

2. Article Number



7160 3901 9848 8027 8067

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

BENNY MARGARET CARVAJAL
1375 Piedra Street
San Diego, CA 92154

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature <i>X Blanca</i>	<i>7-27</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from Item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

1st
acc.

SD2005706
T. Michelle

UNITED STATES POSTAL SERVICE

SAN DIEGO CA 921

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

● PRINT YOUR NAME, ADDRESS AND ZIP CODE BELOW ●

ATTORNEY GENERAL



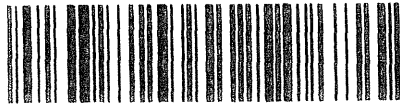
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
PO BOX 85266
SAN DIEGO CA 92186-9961

2006 JAN 9

Exhibit D

Return Receipt No. 7160 3901 9849 3220 2163

2. Article Number



7160 3901 9849 3220 2163

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

BENNY MARGARET CARVAJAL
4007 Darwin Avenue
San Diego, CA 92154

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X *Veronica Laird*

Agent
 Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Yes
 No

2nd Acc.

2006 MAR 15 AM 8:31
ATTORNEY GENERAL

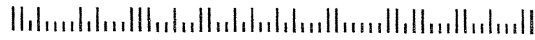
SD2005700380
Michelle Laird

UNITED STATES POSTAL SERVICE

SAN DIEGO CA 92111

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

● PRINT YOUR NAME, ADDRESS AND ZIP CODE BELOW ●



OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
PO BOX 85266
SAN DIEGO CA 92186-9961

Exhibit E
Certification of Costs

1 BILL LOCKYER, Attorney General
of the State of California
2 T. MICHELLE LAIRD, State Bar No. 162979
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2323
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Accusation No. 2861

13 **BENNY MARGARET CARVAJAL**
aka B. Margaret Carvajal

14
15 Respondent.

CERTIFICATION OF COSTS:
DECLARATION OF T. MICHELLE
LAIRD

16 [Business and Professions Code section
17 125.3]

18
19 I, T. MICHELLE LAIRD, hereby declare and certify as follows:

20 1. I am a Deputy Attorney General employed by the California Department of
21 Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in
22 the Civil Division of the Office. I have been designated as the representative to certify the costs
23 of prosecution by DOJ in this case. I make this certification in my official capacity and as an
24 officer of the court.

25 2. I represent the Complainant, Patricia F. Harris, Executive Officer of the
26 Board of Pharmacy, in this action. I was assigned to handle this case on or around April 1, 2005.

27 3. As the Deputy Attorney General assigned to handle this case, I performed
28 a wide variety of tasks that were necessary for the prosecution of this matter, including, but not

1 limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the
 2 investigative material; (3) drafting pleadings, correspondence, memoranda, and other case-related
 3 documents; (4) researching relevant points of law and fact; (5) consulting and/or meeting with
 4 colleague deputies, supervisory staff, experts, client staff, and investigators; (6) service of
 5 Respondent; and, (7) Requesting discovery.

6 4. I am personally familiar with the time recording and billing practices of
 7 DOJ and the procedure for charging the client agency for the reasonable and necessary work
 8 performed on a particular case. Whenever work is performed on a case, it is the duty of the
 9 employee to keep track of the time spent and to report that time on DOJ time sheets at or near the
 10 time of the tasks performed. Based upon the time reported through April 25, 2006, DOJ has
 11 billed or will bill the Board for the following amount of time spent working on the above entitled
 12 case.

14	<u>Employee/ Position</u>	<u>Fiscal Year</u>	<u>No. of Hours</u>	<u>Hourly Rate</u>	<u>Total Charges</u>
16	T. Michelle Laird	2004-2005	0.50	139	69.50
17	Deputy Attorney General				
18	T. Michelle Laird	2005-2006	31.00	146	4,526.00
19	Deputy Attorney General				
20					TOTAL: \$4,595.50

21
 22 5. To the best of my knowledge the items of cost set forth in this certification
 23 are correct and were necessarily incurred in this case.

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I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4/26/06, in the City of San Diego, California.



T. MICHELLE LAIRD
Deputy Attorney General

Declarant

80071824.wpd
SD2005700380