

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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Supervising Deputy Attorney General
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Deputy Attorney General
4 110 West "A" Street, Suite 1100
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6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3080

13 LINDSAY DUNWOODIE
14 14041 Newland Street #B16
Westminster, CA 92683

**DEFAULT DECISION
AND ORDER**

15 Technician Registration No. 51297

[Gov. Code, §11520]

16 Respondent.

17
18 FINDINGS OF FACT

19 1. On or about October 16, 2007, Complainant Virginia Herold, in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs, filed Accusation No. 3080 against Lindsay Dunwoodie (Respondent) before the Board of
22 Pharmacy.

23 2. On or about January 7, 2004, the Board of Pharmacy (Board) issued
24 Technician Registration No. 51297 to Respondent. The technician registration was in full force
25 and effect at all times relevant to the charges brought herein and expired on September 30, 2007.

26 3. On or about October 29, 2007, Sandra Sotelo, an employee of the
27 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
28 3080, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was and is 14041 Newland Street #B16, Westminster, California 92683. A copy of the
3 Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are
4 incorporated herein by reference.

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

7 5. On or about November 19, 2007, the aforementioned documents were
8 returned by the U.S. Postal Service marked "Attempted Not Known. The only fwd on file is for
9 an indiv. Pls submit 3575 for family or addl indiv. Thanks CFS Unit." A copy of the envelope
10 returned by the post office is attached as Exhibit B, and is incorporated herein by reference.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
18 Accusation No. 3080.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board
24 finds Respondent is in default. The Board will take action without further hearing and, based on
25 Respondent's express admissions by way of default and the evidence before it, contained in
26 exhibits A, B and C, finds that the allegations in Accusation No. 3080 are true.

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1 10. The total costs for investigation and enforcement are \$4,240.50 as of
2 November 26, 2007. A Certification of Costs: Declaration of Antoinette B. Cincotta is attached
3 hereto as Exhibit C.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Lindsay Dunwoodie
6 has subjected her technician registration no. 51297 to discipline.

7 2. A copy of the Accusation and the related documents and Declaration of
8 Service are attached.

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

10 4. The Board of Pharmacy is authorized to revoke Respondent's technician
11 registration no. 51297 based upon the following violations alleged in the Accusation:

12 a. violation of Business and Professions Code sections 490 and
13 4301(1) in that she was convicted of misdemeanor grand theft, a crime that is
14 substantially related to the qualifications, duties, and functions of a Pharmacy Technician;

15 b. violation of Business and Professions Code section 4060 in
16 that Respondent possessed Norco, Vicodin, Xanax and Valium without a
17 prescription;

18 c. violation of Business and Professions code section 4301(f)
19 in that Respondent committed dishonesty, fraud, and deceit when she stole over
20 \$400.00 in controlled drugs from her employer; and

21 d. violation of Business and Professions Code section 4301(j)
22 and Health and Safety code sections 11350(a), 11351, 11352, 11377(a), 11378,
23 and 11379(a) for the possession, possession for sale, and transport of Norco,
24 Vicodin, Xanax, and Valium without a prescription.

25 ORDER

26 IT IS SO ORDERED that technician registration no. 51297, heretofore issued to
27 Respondent Lindsay Dunwoodie, is revoked.

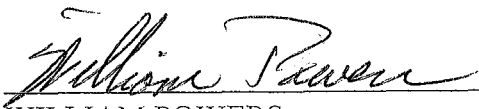
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1 Pursuant to Government Code section 11520, subdivision (c), Respondent may
2 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
3 within seven (7) days after service of the Decision on Respondent. The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

6 This Decision shall become effective on February 13, 2008.

7 It is so ORDERED January 14, 2008

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10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 By 
14 WILLIAM POWERS
15 Board President

16 80182474.wpd

17 DOJ docket number:SD2007801167

18 Attachments:

19 Exhibit A: Accusation No. 3080, Related Documents, and Declaration of Service
20 Exhibit B: Copy of Envelope Returned by Post Office
21 Exhibit C: Certification of Costs: Declaration of Antoinette Cincotta

Exhibit A
Accusation No. 3080,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
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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 LINDSAY DUNWOODIE
14 Respondent.
15

Case No. 3080
STATEMENT TO RESPONDENT
[Gov. Code §§ 11504, 11505(b)]

16
17 TO RESPONDENT:

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

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

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

28 ///

1 Antoinette B. Cincotta
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, CA 92101, within ten (10) working days after you discover the good cause. Failure to
19 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.

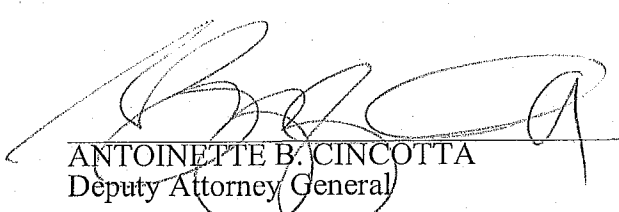
3 Any stipulation must be consistent with the Board's established disciplinary
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state
6 agency bringing this action.

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
9 Antoinette B. Cincotta at the earliest opportunity.

10 DATED: October 29, 2007

11 EDMUND G. BROWN JR., Attorney General
12 of the State of California

13 LINDA K. SCHNEIDER
14 Supervising Deputy Attorney General

15 
16 ANTOINETTE B. CINCOTTA
17 Deputy Attorney General

18 Attorneys for Complainant

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4 California Department of Justice
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BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3080

14 LINDSAY DUNWOODIE
14041 Newland Street #B16
15 Westminster, CA 92683

ACCUSATION

16 Technician Registration Number 51297

17 Respondent.
18

19 Complainant alleges:

20 PARTIES

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about January 7, 2004, the Board of Pharmacy issued original
24 Technician Registration Number 51297 to Lindsay Dunwoodie (Respondent). The registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2007, 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 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

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

6. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued

7. 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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

///

1 (l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (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. . . .

4 8. Section 4060 of the Code states:

5 No person shall possess any controlled substance, except that
6 furnished to a person upon the prescription of a physician, dentist, podiatrist, or
7 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. . . .

8 9. Health and Safety Code section 11350, subdivision (a) provides:

9 Except as otherwise provided in this division, every person who possesses
10 . . . any controlled substance classified in Schedule III, IV, or V which is a
narcotic drug, unless upon the written prescription of a physician, dentist,
11 podiatrist, or veterinarian licensed to practice in this state, shall be punished by
imprisonment in the state prison.

12 10. Health and Safety Code section 11351 provides:

13 Except as otherwise provided in this division, every person who possesses
14 for sale or purchases for purposes of sale . . . (2) any controlled substance
classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by
15 imprisonment in the state prison for two, three, or four years.

16 11. Health and Safety Code section 11352 provides:

17 (a) Except as otherwise provided in this division, every person who
18 transports, imports into this state, sells, furnishes, administers, or gives away, or
offers to transport, import into this state, sell, furnish, administer, or give away, or
attempts to import into this state or transport . . . (2) any controlled substance
19 classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
20 practice in this state, shall be punished by imprisonment in the state prison for
three, four, or five years.

21 (b) Notwithstanding the penalty provisions of subdivision (a), any person
22 who transports for sale any controlled substances specified in subdivision (a)
within this state from one county to another noncontiguous county shall be
23 punished by imprisonment in the state prison for three, six, or nine years.

24 12. Health and Safety Code section 11377 provides in relevant part:

25 (a) Except as authorized by law and as otherwise provided in subdivision
26 (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter
9 of Division 2 of the Business and Professions Code, every person who possesses
27 any controlled substance which is (1) classified in Schedule III, IV, or V, and
which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in
28 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)

1 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e),
2 or (f) of Section 11055, unless upon the prescription of a physician, dentist,
3 podiatrist, or veterinarian, licensed to practice in this state, shall be punished by
imprisonment in a county jail for a period of not more than one year or in the state
prison.

4 13. Health and Safety Code section 11378 provides:

5 Except as otherwise provided in Article 7 (commencing with Section
6 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every
7 person who possesses for sale any controlled substance which is (1) classified in
8 Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of
9 Section 11056, (2) specified in subdivision (d) of Section 11054, except
10 paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3)
specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in
paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in
subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and
subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055,
shall be punished by imprisonment in the state prison.

11 14. Health and Safety Code section 11379, subdivision (a), provides:

12 Except as otherwise provided in subdivision (b) and in Article 7
13 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and
14 Professions Code, every person who transports, imports into this state, sells,
15 furnishes, administers, or gives away, or offers to transport, import into this state,
16 sell, furnish, administer, or give away, or attempts to import into this state or
17 transport any controlled substance which is (1) classified in Schedule III, IV, or V
18 and which is not a narcotic drug, except subdivision (g) of Section 11056, (2)
19 specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15),
20 (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of
subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except
paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1)
of subdivision (f), of Section 11055, unless upon the prescription of a physician,
dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be
punished by imprisonment in the state prison for a period of two, three, or four
years.

21 15. California Code of Regulations, title 16 (CCR), section 1770, states:

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

26 16. CCR section 1769, states:

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1 (b) When considering the suspension or revocation of a facility or a
2 personal license on the ground that the licensee or the registrant has been
3 convicted of a crime, the board, in evaluating the rehabilitation of such person and
4 his present eligibility for a license will consider the following criteria:

5 (1) Nature and severity of the act(s) or offense(s).

6 (2) Total criminal record.

7 (3) The time that has elapsed since commission of the act(s) or offense(s).

8 (4) Whether the licensee has complied with all terms of parole, probation,
9 restitution or any other sanctions lawfully imposed against the licensee.

10 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

15 DRUGS

16 18. "Norco" and "Vicodin" are trade names for hydrocodone with
17 acetaminophen, and are Schedule III controlled substances as designated by Health and Safety
18 Code section 11056, subdivision (e)(4), and dangerous drugs within the meaning of Business and
19 Professions Code section 4022 in that they require a prescription under federal law.

20 19. "Xanax" is a trade name for alprazolam, and is a Schedule IV controlled
21 substance as designated by Health and Safety Code section 11057(d)(1), and a dangerous drug
22 within the meaning of Business and Professions Code section 4022 in that it requires a
23 prescription under federal law.

24 20. "Valium" is a trade name for diazepam and is a Schedule IV controlled
25 substance as designated by Health and Safety code section 11057(d)(9) and a dangerous drug
26 within the meaning of Business and Professions Code section 4022 in that it requires a
27 prescription under federal law.

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FIRST CAUSE FOR DISCIPLINE

(November 9, 2006 Criminal Conviction for Grand Theft on March 25, 2006)

21. Respondent has subjected her license to discipline under sections 490 and 4301(1) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances are as follows:

a. On or about November 9, 2006, in a criminal proceeding entitled *People v. Lindsay Renee Dunwoodie*, Orange County Superior Court, case number 06HF1227, Respondent was convicted on her plea of guilty of violating Penal Code section 487(a), misdemeanor grand theft (pursuant to Penal Code section 17(b)).

b. As a result of the conviction, on or about November 9, 2006, Respondent was sentenced to 120 days in the county jail, three years informal probation, payment of fines, fees, and restitution, and standard terms and conditions.

c. The facts that lead to the conviction were that on or about March 24, 2006, Respondent was employed at a Newport Beach Sav-On Drugs. The store's pharmacist-in-charge had reported a drug loss of controlled substances and suspected Respondent was responsible because of changes to her behavior. The pharmacist contacted Loss Prevention, who then questioned Respondent about the missing drugs. Respondent provided a signed statement admitting to the theft of Vicodin (60 pills), Norco (100 pills), Xanax (100 pills), and Valium (100 pills), amounting to a value of approximately \$600. Respondent was placed on suspension and the theft was reported to the Newport Beach Police Department. The following day, March 25, 2006, Respondent was interviewed by detectives and she again confessed to stealing the drugs from her employer. The case was referred to the district attorney for prosecution and a Felony Complaint Warrant was filed on June 29, 2006.

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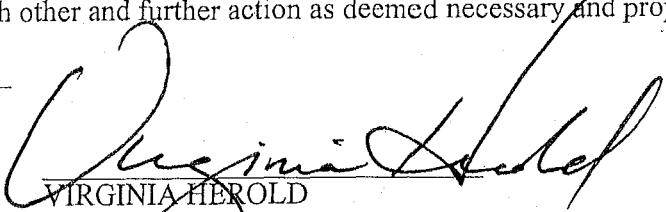
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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/16/07



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

SD2007801167
80140228.wpd

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

In the Matter of the Accusation Against:

Case No. 3080

LINDSAY DUNWOODIE

Respondent.

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone 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. 80174462.wpd SD2007801167

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

In the Matter of the Accusation Against:

Case No. 3080

LINDSAY DUNWOODIE

Respondent.

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

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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 _____

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of the State of California
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6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 LINDSAY DUNWOODIE
14
15 Respondent.

Case No. 3080
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
23 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
24 ARE HEREBY REQUESTED TO:

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

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

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

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

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

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

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

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

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

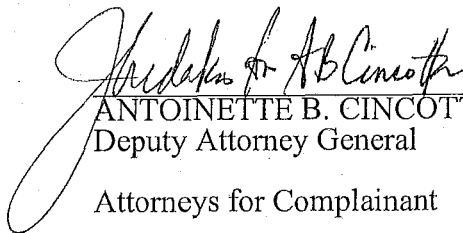
Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

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: October 29, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California

LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

80174462.wpd
SD2007801167

**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

(Certified & First Class Mail (separate mailing))

Case Name: Dunwoodie

Board of Pharmacy Case No. 3080

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; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 29, 2007, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2 copies); 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 copies); 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, addressed as follows:

Lindsay Dunwoodie
14041 Newland Street #B16
Westminster, CA 92683



Certified Article No.



I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 29, 2007, at San Diego, California.

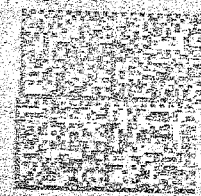
S. Sotelo

Typed Name

Signature

Exhibit B

Copy of Envelope Returned by Post Office



Postage

010120502775

\$01.480

10/29/2007

Mailed From 92101
US POSTAGE

ANTOINETTE B. CINCOTTA

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
110 WEST A STREET SUITE 1100
P.O. BOX 85266
SAN DIEGO CA 92186-5266

RETURNED TO SENDER
ATTEMPTED NOT KNOWN

Lindsay Dunwoodie
14041 Newland Street #B16
Westminster, CA 92683

DUNWO41 926831013 1307 19 11/08/07
NOTIFY SENDER OF NEW ADDRESS
DUNWOODIE, MARJORIE R

THE ONLY FWD ON FILE IS FOR AN INDV.
PLS SUBMIT 3575 FOR FAMILY OR ADDL
INDV. THANKS CFS UNIT

WRONG INDIVIDUAL



Exhibit C

Certification of Costs: Declaration of Antoinette Cincotta

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 LINDSAY DUNWOODIE
14 14041 Newland Street #B16
Westminster, CA 92683

15 Technician Registration No. 51297

16 Respondent.

Case No. 3080

**CERTIFICATION OF
PROSECUTION COSTS:
DECLARATION OF ANTOINETTE
B. CINCOTTA**

[Business and Professions Code section
125.3]

18 I, ANTOINETTE B. CINCOTTA, hereby declare and certify as follows:

19 1. I am a Deputy Attorney General employed by the California Department of
20 Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in
21 the Civil Division of the Office. I have been designated as the representative to certify the costs
22 of prosecution by DOJ and incurred by the Board of Pharmacy in this case. I make this
23 certification in my official capacity and as an officer of the court and as a public employee
24 pursuant to Evidence Code section 664.

25 2. I represent the Complainant, Virginia Herold, Executive Officer of the
26 Board of Pharmacy, in this action. I was assigned to handle this case on or around May 7, 2007.

27 3. Our Office's computerized case management system reflects that the
28 following persons have performed tasks related to this matter: Antoinette Cincotta, Deputy

1 Attorney General; Linda Schneider, Supervising Deputy Attorney General; and Amanda Dodds,

2 4. I am familiar with the time recording and billing practices of DOJ and the
3 procedure for charging the client agency for the reasonable and necessary work performed on a
4 particular case. It is the duty of the time keeping employees to keep track of the time spent and
5 to report that time in DOJ's computerized case management system at or near the time of the
6 tasks performed.

7 5. On November 26, 2007, I requested a billing summary for this case from
8 the Accounting Department of the DOJ. In response on, November 26, 2007, I received a
9 document entitled "Matter Time Activity by Professional Type." I hereby certify that the Matter
10 Time Activity by Professional Type, attached hereto as Exhibit A, and herein incorporated by
11 reference, is a true and correct copy of the billing summary for this matter that I received from
12 the Accounting Department. The summary includes the billing costs incurred by myself, as well
13 as other professionals of the DOJ who worked on the matter; and sets forth the tasks undertaken,
14 the amount of time billed for the activity, and the billing rate by professional type. The billing
15 summary is comprehensive of the charges by the Office to the Board of Pharmacy through
16 November 26, 2007. It does not include billing for tasks performed after November 26, 2007.

17 6. Based upon the time reported through November 26, 2007, as set forth in
18 Exhibit A, DOJ has billed the Board of Pharmacy \$1,884.25 for the time spent working on the
19 above entitled case.

20 7. To the best of my knowledge the items of cost set forth in this certification
21 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 _____, in the City of San Diego, California.

ANTOINETTE B. CINCOTTA
Deputy Attorney General

Declarant

80182567.wpd
SD2007801167



Matter Time Activity By Professional Type

As Of 11/26/2007

Trans #	Date	Section	Client	Task	Hours Worked	Rate	Amount	Adj?	Stmn Date
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Matter ID: SD2007801167 Date Opened: 05/07/2007

Description: Dunwoodie, Lindsay, TCH

Professional Type: ATTORNEY

Fiscal Year: 2007-2008

Professional: Antoinette B. Cincotta

800302444	08/28/07	CV-LIC:110	03583	Pleading Preparation	4.00	\$158.00	\$632.00		08/31/07
800314199	10/15/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		10/31/07
800314403	10/15/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		10/31/07
800315876	10/19/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		10/31/07
800317472	10/29/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		10/31/07
800317479	10/29/07	CV-LIC:110	03583	Trial Preparation	1.25	\$158.00	\$197.50		10/31/07
800323276	11/19/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		
800323277	11/19/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		
800323914	11/21/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		

Antoinette B. Cincotta Totals: 7.00 \$1,106.00

Professional: Linda K. Schneider

800302667	08/28/07	CV-LIC:110	03583	Supervisory Review	0.50	\$158.00	\$79.00		08/31/07
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Linda K. Schneider Totals: 0.50 \$79.00

2007-2008 Totals: 7.50 \$1,185.00

Fiscal Year: 2006-2007

Professional: Antoinette B. Cincotta

800281400	06/06/07	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		06/30/07
800285141	06/20/07	CV-LIC:110	03583	Client Communication	0.25	\$158.00	\$39.50		06/30/07

Antoinette B. Cincotta Totals: 0.50 \$79.00

Professional: Linda K. Schneider

800284682	06/18/07	CV-LIC:110	03583	Supervisory Review	0.25	\$158.00	\$39.50		06/30/07
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Linda K. Schneider Totals: 0.25 \$39.50

2006-2007 Totals: 0.75 \$118.50

ATTORNEY Totals: 8.25 \$1,303.50

Matter Time Activity By Professional Type

As Of 11/26/2007

Trans #	Date	Section	Client	Task	Hours Worked	Rate	Amount	Adj?	Stmn Date
Professional Type: PARALEGAL									
Fiscal Year: 2006-2007									
Professional: Amanda Dodds									
800283085	06/12/07	CV-LIC:110	03583	Pleading Preparation	3.00	\$101.00	\$303.00		06/30/07
800283087	06/12/07	CV-LIC:110	03583	Case Evaluation/Assessment	1.00	\$101.00	\$101.00		06/30/07
800285095	06/20/07	CV-LIC:110	03583	Pleading Preparation	1.75	\$101.00	\$176.75		06/30/07
Amanda Dodds Totals:					<u>5.75</u>		<u>\$580.75</u>		
2006-2007 Totals:					<u>5.75</u>		<u>\$580.75</u>		
PARALEGAL Totals:					5.75		\$580.75		
SD2007801167 Totals:					14.00		\$1,884.25		