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

10 In the Matter of the Accusation Against:

Case No. 3381

11 **MICHAEL KENNETH FREITAS**
12 **35245 Lido Boulevard**
13 **Newark, CA 94560**

DEFAULT DECISION AND ORDER

14 **Pharmacy Technician License No. TCH 59123**

[Gov. Code, §11520]

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about October 26, 2009, Complainant Virginia Herold, in her official capacity
17 as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, filed Accusation No.
18 3381 against Michael Kenneth Freitas (Respondent) before the Board of Pharmacy.

19 2. On or about February 17, 2005, the Board of Pharmacy (Board) issued Pharmacy
20 Technician License No. TCH 59123 to Respondent. The License was in full force and effect at
21 all times relevant to the charges brought and will expire on December 31, 2010, unless renewed.

22 3. On or about November 4, 2009, Fe M. Domingo, an employee of the Department of
23 Justice, served copies of: Accusation No. 3381; a Statement to Respondent, a Notice of Defense,
24 a Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 by
25 Certified and First Class Mail to Respondent's address of record with the Board, which was and
26 is: 35245 Lido Boulevard, Newark, CA 94560. Copies of the Accusation and accompanying
27 service materials are attached as exhibit A, and incorporated herein by reference.

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

1 a. In violation of Business and Professions Code section(s) 4301(l) and/or 490, and/or
2 by reference to California Code of Regulations, title 16, section 1770, Respondent was convicted
3 of a substantially related crime, when on or about January 26, 2009, in *People v. Michael Kenneth*
4 *Freitas*, Case No. 220812 in Alameda County Superior Court, Respondent was convicted of
5 violating Penal Code section 647, subdivision (f) (Disorderly conduct – public intoxication and/or
6 being under the influence of drugs in public);

7 b. In violation of Business and Professions Code section 4301(h), on one or more
8 occasions including on September 6, 2006 and/or on February 23, 2008, Respondent administered
9 controlled substances, including **methamphetamine** products, to himself;

10 d. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4059,
11 Respondent, as described above, furnished to himself or another without valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, controlled substance(s);

13 e. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4060,
14 and/or Health and Safety Code section 11377, Respondent, as described above, possessed, and/or
15 conspired to, assisted or abetted possession of, a controlled substance, without valid prescription;

16 f. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
17 Health and Safety Code section(s) 11170 and/or 11550, Respondent, as described above, self-
18 administered/used, conspired to self-administer/use, and/or assisted in/abetted self-
19 administration/use of, a controlled substance, without prescription;

20 g. In violation of Business and Professions Code section 4301, Respondent, as described
21 above, engaged in unprofessional conduct.

22 5. In addition, the Board of Pharmacy is authorized to revoke Respondent's Pharmacy
23 Technician License based upon the following discipline considerations alleged in the Accusation:

24 a. On or about April 20, 1998, in *People v. Michael K. Freitas*, Case No. 178637 in
25 Fremont-Newark-Union City Judicial District Municipal Court (subsequently absorbed into
26 Alameda County Superior Court), Respondent was convicted of violating Vehicle Code section
27 23152(a) (Driving under the influence of drugs), a misdemeanor, and Penal Code section 647(f)
28 (Disorderly conduct – public intoxication/being under the influence of drugs), a misdemeanor;

Exhibit A
Accusation No. 3381

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3381

11 **MICHAEL KENNETH FREITAS**
12 **35245 Lido Boulevard**
13 **Newark, CA 94560**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 59123**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about February 17, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 59123 to Michael Kenneth Freitas (Respondent). The License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on December
23 31, 2010, unless renewed.

24
25 JURISDICTION

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

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

5 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
6 revoke a license when it finds that the licensee has been convicted of a crime substantially related
7 to the qualifications, functions or duties of the license.

8 9. California Code of Regulations, title 16, section 1770, states:

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

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
18 controlled substance, except that furnished upon a valid prescription/drug order.

19 12. Health and Safety Code section 11170 provides that no person shall prescribe,
20 administer, or furnish a controlled substance for himself or herself.

21 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
22 any controlled substance in Schedule II, subdivision (d), without a prescription.

23 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful to use or
24 be under the influence of any controlled substance in Schedule II (Health and Safety Code section
25 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when administered by
26 or under the direction of an authorized licensee.

27 ///

28 ///

1 COST RECOVERY

2 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation of the licensing
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

5
6 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

7 16. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 17. Section 4022 of the Code states, in pertinent part:

11 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
12 except veterinary drugs that are labeled as such, and includes the following:

13 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
14 prescription,’ ‘Rx only,’ or words of similar import.

15 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
16 prescription or furnished pursuant to Section 4006.”

17 18. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
18 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
19 Code section 4022. It is a stimulant drug.

20
21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of Substantially Related Crime(s))

23 19. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
24 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
25 a substantially related crime, in that on or about January 26, 2009, in *People v. Michael Kenneth*
26 *Freitas*, Case No. 220812 in Alameda County Superior Court, Respondent was convicted of
27 violating Penal Code section 647, subdivision (f) (Disorderly conduct – public intoxication/under
28 the influence of drugs), a misdemeanor. The conviction was entered as follows:

1 a. On or about September 27, 2006, based on his alleged conduct on September 6,
2 2006, Respondent was charged by Complaint with violating (1) Vehicle Code section 23152,
3 subdivision (a) (Driving under influence of alcohol or drugs), a misdemeanor, with allegations of
4 two prior convictions for this offense on April 20, 1998 and December 14, 2000, and (2) Health
5 and Safety Code section 11550, subdivision (a) (Use/under influence of controlled substance –
6 **methamphetamine**), also a misdemeanor;

7 b. On or about January 26, 2009, Respondent entered a plea of no contest and was
8 convicted of a substituted charge of violating Penal Code section 647, subdivision (f) (Disorderly
9 conduct – public intoxication/under influence of drugs), a misdemeanor. Imposition of sentence
10 was suspended in favor of a period of conditional release (probation) of three (3) years, on terms
11 and conditions including credit for time served, fines and fees.

12
13 SECOND CAUSE FOR DISCIPLINE

14 (Self-Administration of Controlled Substance)

15 20. Respondent is subject to discipline under section 4301(h) of the Code, in that
16 Respondent, as described in paragraph 19 above and/or in a separate incident resulting in his
17 arrest on or about February 23, 2008 on suspicion of violating Health and Safety Code section
18 11550 (Use/under influence of controlled substance – **methamphetamine**), on one or more
19 occasions administered one or more controlled substances to himself.

20
21 THIRD CAUSE FOR DISCIPLINE

22 (Furnishing of Controlled Substance)

23 21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
25 in paragraphs 19 and 20 above, furnished to himself or another without a valid prescription,
26 and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

27 ///

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11377, in that Respondent, as described
5 in paragraphs 19 and 20 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Self-Administration/Use of Controlled Substance)

10 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
12 paragraphs 19 and 20 above, self-administered/used, conspired to self-administer/use, and/or
13 assisted in/abetted self-administration/use, of a controlled substance, without prescription.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

17 24. Respondent is subject to discipline under section 4301 of the Code in that
18 Respondent, as described in paragraphs 19 to 23 above, engaged in unprofessional conduct.

DISCIPLINE CONSIDERATIONS

1
2 25. To determine the proper degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about April 20, 1998, in a case titled *People v. Michael K. Freitas*,
4 Case No. 178637 in Fremont-Newark-Union City Judicial District Municipal Court (subsequently
5 absorbed into Alameda County Superior Court), Respondent was convicted of violating Vehicle
6 Code section 23152, subdivision (a) (Driving under the influence of drugs), a misdemeanor, and
7 violating Penal Code section 647, subdivision (f) (Disorderly conduct – public intoxication/under
8 the influence of drugs), also a misdemeanor. The conviction was entered as follows:

9 a. On or about March 4, 1998, based on his alleged conduct on January 14 and/or
10 January 17, 1998, Respondent was charged by Complaint with violating (1) Vehicle Code section
11 23152, subdivision (a) (Driving under influence of drugs), a misdemeanor, (2) Health and Safety
12 Code section 11550 (Use/under influence of controlled substance – **methamphetamine**), a
13 misdemeanor, and (3) Health and Safety Code section 11550 (Use/under influence of controlled
14 substance – **methamphetamine**), also a misdemeanor;

15 b. On or about April 20, 1998, Respondent was convicted of violating Vehicle
16 Code section 23152, subdivision (a) (Driving under the influence of drugs), a misdemeanor, and
17 violating Penal Code section 647, subdivision (f) (Disorderly conduct – public intoxication/under
18 the influence of drugs), also a misdemeanor. Imposition of sentence was suspended in favor of a
19 period of conditional release (probation) of three (3) years, on terms and conditions including 30
20 days in county jail and/or work program(s) (2 days CTS), attendance at the county Driving Under
21 the Influence of Intoxicants School, a six-month suspension of his driver's license, fines and fees.

22 26. To determine the proper degree of discipline, if any, to be imposed on Respondent,
23 Complainant further alleges that on or about December 14, 2000, in a case titled *People v.*
24 *Michael Kenneth Freitas*, Case No. 190861 in Fremont-Newark-Union City Judicial District
25 Municipal Court (subsequently absorbed into Alameda County Superior Court), Respondent was
26 convicted of violating Vehicle Code section 23152, subdivision (a) (Driving under the influence
27 of alcoholic beverage), a misdemeanor. The conviction was entered as follows:
28

1 a. On or about October 23, 2000, based on his alleged conduct on September 24,
2 2000, Respondent was charged by Complaint with violating (1) Vehicle Code section 23152,
3 subdivision (a) (Driving under influence of alcoholic beverage), a misdemeanor, (2) Vehicle
4 Code section 23152, subdivision (b) (Driving with blood alcohol of .08% percent or more), a
5 misdemeanor, and (3) Vehicle Code section 20002, subdivision (a) (Failure to stop vehicle after
6 accident involving damage to property), also a misdemeanor;

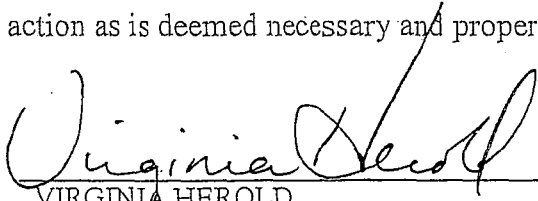
7 b. On or about December 14, 2000, Respondent was convicted of violating
8 Vehicle Code section 23152, subdivision (a) (Driving under the influence of alcoholic beverage),
9 a misdemeanor. Imposition of sentence was suspended in favor of a period of conditional release
10 (probation) of three (3) years, on terms and conditions including 10 days in county jail and/or
11 work program(s) (1 day CTS), attendance and completion of the Drinking Driver Program, a 24-
12 month restriction of his driver's license, a prohibition on use of intoxicants, fines and fees.

13
14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician License Number TCH 59123, issued
18 to Michael Kenneth Freitas (Respondent);
- 19 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
20 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 21 3. Taking such other and further action as is deemed necessary and proper.

22
23 DATED: 10/26/09


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3381

11 **MICHAEL KENNETH FREITAS**

STATEMENT TO RESPONDENT

12 Respondent.

[Gov. Code §§ 11504, 11505(b)]

13
14
15 **TO RESPONDENT:**

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

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

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

26
27 **Joshua A. Room**
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
28 **San Francisco, California 94102**

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

2 The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a
3 specific denial of all parts of the Accusation, but you will not be permitted to raise any objection
4 to the form of the Accusation unless you file a further Notice of Defense as provided in section
5 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

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

8 The hearing may be postponed for good cause. If you have good cause, you are obliged to
9 notify the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612,
10 within ten (10) working days after you discover the good cause. Failure to notify the Office of
11 Administrative Hearings within ten (10) days will deprive you of a postponement.

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

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

17 **NOTICE REGARDING STIPULATED SETTLEMENTS**

18 It may be possible to avoid the time, expense and uncertainties involved in an
19 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
20 settlement is a binding written agreement between you and the government regarding the matters
21 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
22 Board of Pharmacy but, once approved, it would be incorporated into a final order.

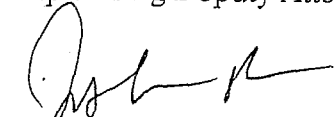
23 Any stipulation must be consistent with the Board's established disciplinary guidelines;
24 however, all matters in mitigation or aggravation will be considered. A copy of the Board's
25 Disciplinary Guidelines will be provided to you on your written request to the state agency
26 bringing this action.

27
28

1 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
2 have any questions, you or your attorney should contact Deputy Attorney General Joshua A.
3 Room at the earliest opportunity.

4 Dated: November 4, 2009

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 3381

MICHAEL KENNETH FREITAS

Respondent.

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing

Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Check appropriate box:

- I do not consent to electronic reporting.

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

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

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

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

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

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

In the Matter of the Accusation Against:

Case No. 3381

MICHAEL KENNETH FREITAS

Respondent.

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing
Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Check appropriate box:

- I do not consent to electronic reporting.

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

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

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

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

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

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1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
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STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

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11 MICHAEL KENNETH FREITAS

REQUEST FOR DISCOVERY

12 Respondent.
13

14 TO RESPONDENT:

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

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

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

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

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

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

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

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

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

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

17
18 For the purpose of this Request for Discovery, "statements" include written statements by
19 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
20 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
21 summaries of these oral statements.

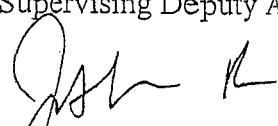
22
23 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
24 should be deemed to authorize the inspection or copying of any writing or thing which is
25 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
26 product.

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

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

7
8 Dated: November 4, 2009

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



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Deputy Attorney General
Attorneys for Complainant

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

SECTION 11507.5: Exclusivity of discovery provisions

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

SECTION 11507.6: Request for discovery

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

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

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

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

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

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

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

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

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

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

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

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

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

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

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

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

DECLARATION OF SERVICE
(Certified and First Class Mail)

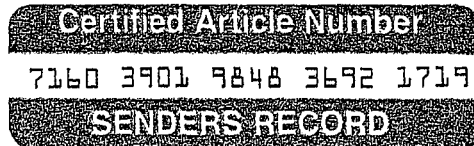
In the Matter of the Accusation Against: *Michael Kenneth Freitas*
Agency Case No. 3381

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 November 4, 2009, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery, and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the same document(s) was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Michael Kenneth Freitas
35245 Lido Boulevard
Newark, CA 94560



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 November 4, 2009 at San Francisco, California.

FE M. DOMINGO

Typed Name

FE M. Domingo

Signature

SENDER: Joshua A. Room

REFERENCE: SF2009404224

PS Form 3800, January 2005

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1. Article Number

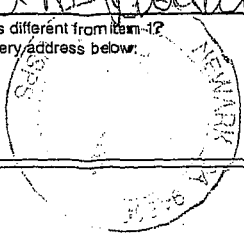


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COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *S. Wood* B. Date of Delivery *1/24/09*
C. Signature *Donna M. Freitas* Agent Addressee

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



3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

5. Article Addressed to:

Michael Kenneth Freitas
35245 Lido Boulevard
Newark, CA 94560

SF2009404224
Joshua A. Room