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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:

13 KENNETH HAVEN MENDOZA
14 27793 Tierra Vista Road
Temecula, CA 92592

15 Original Pharmacist License No. RPH 35053

16 Respondent.
17

Case No. 98-16483

OAH No. L-2001-040459

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant Patricia F. Harris is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Bill Lockyer, Attorney General of the State of California, by Sherry Ledakis, Deputy
24 Attorney General.

25 2. Respondent Kenneth Haven Mendoza ("Respondent") is represented in
26 this proceeding by attorney Chad Calabria, Esq., whose address is 16133 Ventura Blvd., Ste.
27 1270, Encino, CA 91436.

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2. REHABILITATION PROGRAM

Within ten (10) days of the effective date of this decision, respondent shall contact the Pharmacist Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the Pharmacist Recovery Program and as approved by the Board. The costs for the Pharmacist Recovery Program participation shall be borne by the respondent.

3. PETITION FOR TERMINATION OF SUSPENSION

Upon successful completion of the Pharmacist Recovery Program respondent shall file a Petition for Termination of Suspension before the Board of Pharmacy. Respondent shall agree to all and any terms and conditions of probation pursuant to the Board's regulatory disciplinary guidelines the Board may impose at the time of his reinstatement.

4. OBEY ALL LAWS

Respondent shall obey all federal and state laws and regulations substantially related or governing the practice of pharmacy.

5. REPORTING TO THE BOARD

Respondent shall report to the Board or its designee quarterly. The report shall be made either in person or in writing, as directed. If the final report is not made as directed, the suspension shall be extended automatically until such time as the final report is made.

6. INTERVIEW WITH THE BOARD

Upon receipt of reasonable notice, respondent shall appear in person for interviews with the Board or its designee upon request at various intervals at a location to be determined by the Board or its designee. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of this stipulated settlement.

7. COOPERATION WITH BOARD STAFF

Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of the respondent's compliance with the terms and conditions of this stipulated settlement. Failure to cooperate shall be considered a violation of this stipulated settlement.

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8. PEER REVIEW

Respondent shall submit to peer review as deemed necessary by the Board.

9. CONTINUING EDUCATION

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

10. REIMBURSEMENT OF BOARD COSTS

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$ 3,600.00. Respondent shall make payments as determined by his Board monitor.

If respondent fails to pay the costs as specified by the Board and on or before the date(s) determined by the Board, the Board shall, without affording the respondent notice and the opportunity to be heard, revoke this stipulated settlement and carry out the disciplinary order that was stayed.

11. STIPULATION MONITORING COSTS

Respondent shall pay the costs associated with the Board's monitoring of respondent's compliance with this stipulated settlement in an amount to be determined by the Board each and every year of the stipulated settlement. Such costs shall be payable to the Board at the end of each year of the stipulated settlement. Failure to pay such costs shall be considered a violation of this stipulated settlement.

12. STATUS OF LICENSE

Respondent shall, at all times while suspended, maintain a current license with the Board, including any period during which suspension is tolled.

If respondent's license expires by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all of the terms of this stipulated settlement not previously satisfied.

13. NOTIFICATION OF MAILING/ADDRESS CHANGE

Within ten (10) days of a change of mailing address, respondent shall notify the Board in writing.

1 **14. TOLLING OF STIPULATED SETTLEMENT**

2 If respondent leaves California to reside or practice outside this state, respondent
3 must notify the Board in writing of the dates of departure and return within ten (10) days of
4 departure or return. Periods of residency, or practice outside California shall not apply to
5 reduction of the stipulated settlement period.

6 It is a violation of this stipulated settlement for respondent's settlement terms to
7 remain tolled pursuant to the provisions of this condition for a period exceeding a consecutive
8 period of three years.

9 **15. TOLLING**

10 If respondent leaves California to reside or practice outside this state, or for any
11 period exceeding ten (10), days (including vacation), respondent must notify the Board in writing
12 of the dates of departure and return. Periods of residency or practice outside the state - or any
13 absence exceeding a period of ten (10) days shall not apply to the reduction of the terms of this
14 stipulated settlement.

15 Respondent shall not practice pharmacy upon returning to this state until
16 notification by the Board the period of suspension has been completed, respondent has
17 successfully completed the Pharmacist Recovery Program and has successfully petitioned for
18 reinstatement of his license.

19 **16. VIOLATION OF THE TERMS OF THIS STIPULATED**
20 **SETTLEMENT**

21 If respondent violates the terms of this stipulated settlement in any respect, the
22 Board, after giving respondent notice and an opportunity to be heard, may revoke this stipulated
23 settlement and carry out the disciplinary order which was stayed. If a petition to revoke this
24 stipulated settlement or an accusation is filed against respondent during his suspension, the
25 Board shall have continuing jurisdiction, and the period of suspension shall be extended, until the
26 petition to revoke, or the accusation is heard and decided. If respondent has not complied with
27 any term or condition of this stipulated settlement, the Board shall have continuing jurisdiction
28 over respondent, and respondent's suspension shall automatically be extended until all terms and

1 conditions have been met or the Board has taken other action as deemed appropriate to treat the
2 failure to comply as a violation of the stipulated settlement, or to terminate the stipulated
3 settlement, and to impose the penalty which was stayed.

4 **17. COMPLETION OF THE TERMS OF THIS STIPULATED**
5 **SETTLEMENT**

6 Upon successful completion of the terms of this stipulated settlement, respondent's
7 license will be fully restored.

8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
10 fully discussed the terms and conditions and other matters contained therein with my attorney
11 Chad Calabria, Esq., I understand the effect this stipulation will have on my Original Pharmacist
12 License No. RPH 35053. I enter into this Stipulated Settlement voluntarily, knowingly and
13 intelligently and agree to be bound by the Disciplinary Order and Decision of the Board of
14 Pharmacy. I further agree that a facsimile copy of this Stipulated Settlement and Disciplinary

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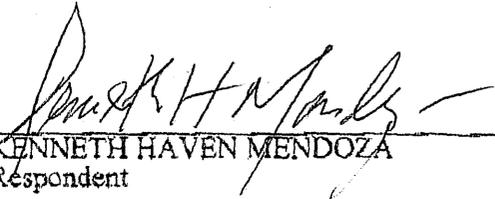
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1 Order, including facsimile copies of signatures, may be used with the same force and effect as
2 the originals.

3 DATED: 8/7/01

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5 
6 KENNETH HAVEN MENDOZA
Respondent

7 **APPROVAL OF FORM AND CONTENT**

8 I have read and fully discussed with Respondent Kenneth Haven Mendoza the terms and
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
10 Order. I approve its form and content.

11 DATED: 7/23/01

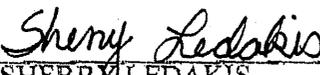
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14 CHAD CALABRIA, ESQ.
Attorney for Respondent

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16 **ENDORSEMENT**

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

19
20 DATED: August 13, 2001

21 BILL LOCKYER, Attorney General
22 of the State of California

23 
24 SHERRY LEDAKIS
25 Deputy Attorney General

26 Attorneys for Complainant

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

In the Matter of the Accusation Against:

KENNETH HAVEN MENDOZA
27793 Tierra Vista Road
Temecula, CA 92592

Original Pharmacist License No. RPH 35053
Respondent.

Case No. 2383

OAH No. L-2001-040459

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 11, 2002.

It is so ORDERED December 12, 2001.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Steve Litsey
STEVE LITSEY
Board President

001 JUN -5 PM 3:44

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
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10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 98-16483

13 KENNETH HAVEN MENDOZA
14 27793 Tierra Vista Road
Temecula, CA 92592

A C C U S A T I O N

15 Original Pharmacist License No. RPH 35053

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

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

23 2. On or about December 11, 1979, the Board of Pharmacy issued Original
24 Pharmacist License Number RPH 35053 to Kenneth Haven Mendoza ("Respondent"). The
25 Original Pharmacist License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on August 31, 2002, unless renewed.

27 3. On April 25, 2001, Administrative Law Judge, Stephen Hjelt, from the
28 Office of Administrative Hearings, San Diego, signed an Interim Order of Suspension

1 immediately suspending Respondent's license to practice pharmacy. The Petition, Memorandum
2 of Points and Authorities, Exhibits and Declarations were sent to Respondent via overnight
3 express mail on April 25, 2001.

4 JURISDICTION

5 4. This Accusation is brought before the Board of Pharmacy ("Board"),
6 under the authority of the following sections of the Business and Professions Code ("Code").

7 5. Section 4300 of the Code states:

8 "(a) Every license issued may be suspended or revoked.

9 "(b) The board shall discipline the holder of any license issued by the board,
10 whose default has been entered or whose case has been heard by the board and found
11 guilty, by any of the following methods:

12 "(1) Suspending judgment.

13 "(2) Placing him or her upon probation.

14 "(3) Suspending his or her right to practice for a period not exceeding one year.

15 "(4) Revoking his or her license.

16 "(5) Taking any other action in relation to disciplining him or her as the board in
17 its discretion may deem proper.

18 " . . .

19 "(e) The proceedings under this article shall be conducted in accordance with
20 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government
21 Code, and the board shall have all the powers granted therein. The action shall be final,
22 except that the propriety of the action is subject to review by the superior court pursuant
23 to Section 1094.5 of the Code of Civil Procedure."

24 ""

25 6. Section 4301 of the Code states:

26 "The Board shall take action against any holder of a license who is guilty of
27 unprofessional conduct Unprofessional conduct shall include, but is not limited to,
28 any of the following:

1 "(a) Gross Immorality.

2 " . . .

3 "(c) Gross Negligence.

4 " . . .

5 "(h) The administering to oneself, of any controlled substance, or the use of any
6 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
7 or injurious to oneself, to a person holding a license under Chapter 9 (commencing with
8 Section 4000) of the Business and Professions Code, or to any other person or to the
9 public, or to the extent that the use impairs the ability of the person to conduct with safety
10 to the public the practice authorized by the license.

11 " . . .

12 "(k) The conviction of more than one misdemeanor or any felony involving the
13 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or
14 any combination of those substances.

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

8 " . . . "

9 7. Section 490 of the Code states:

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

19 8. Section 493 of the Code states:

20 "Notwithstanding any other provision of law, in a proceeding conducted by a
21 board within the department pursuant to law to deny an application for a license or to
22 suspend or revoke a license or otherwise take disciplinary action against a person who
23 holds a license, upon the ground that the applicant or the licensee has been convicted of a
24 crime substantially related to the qualifications, functions, and duties of the licensee in
25 question, the record of conviction of the crime shall be conclusive evidence of the fact
26 that the conviction occurred, but only of that fact, and the board may inquire into the
27 circumstances surrounding the commission of the crime in order to fix the degree of

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1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question. . . ."

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

7 FIRST CAUSE FOR DISCIPLINE

8 (Gross Immorality and Gross Negligence)

9 10. Respondent is subject to disciplinary action under Code section 4301(a)
10 and (c) in that respondent committed gross immorality and gross negligence when he self-
11 administered controlled substances and or alcoholic beverages to such an extent that he presented
12 a danger to the public; he sustained two convictions for driving under the influence of alcohol; he
13 left the scene of an accident; he drove with a suspended license; and he failed to follow through
14 with any type of substance abuse and or alcohol treatment program. The circumstances are as
15 follows:

16 A. On February 24, 1998, respondent sustained his first conviction for
17 driving under the influence of alcohol.

18 B. In March of 1998, respondent was involved in a traffic accident
19 involving another vehicle. Immediately following the accident, respondent left the scene
20 on foot. When he was detained by an officer, the officer noticed the smell of alcohol on
21 respondent's breath and the signs and symptoms of respondent being under the influence
22 of alcohol and or drugs. Respondent was administered field sobriety tests which he
23 failed. He was arrested and placed into custody.

24 C. On or about March 31, 1998, respondent was charged with violating
25 Vehicle Code Sections 23152(a) and (b), with a prior conviction (driving under the
26 influence of alcohol and or drugs, driving with a blood alcohol level above .08, (2.5) and
27 having a prior conviction for driving under the influence), Vehicle Code section 20002(a)
28 (hit and run) and Vehicle Code Section 14601.5(a) (driving with a suspended license).

1 D. On or about March 31, 1998, respondent pled guilty to violating
2 Vehicle Code section 23152(a) (driving while under the influence of alcohol/drugs) with
3 a prior conviction, and to reckless driving.

4 E. On or about December 1, 1999, Patricia Harris, Executive Officer of
5 the Pharmacy Board sent a letter to respondent notifying him of the Board's investigation
6 into his convictions for driving under the influence of alcohol and reckless driving. In
7 that letter, Ms. Harris referred respondent to the Pharmacist Recovery Program for
8 enrollment. She explained that if he enrolled and successfully completed all requirements
9 of the program, the Board's investigation would be closed. Respondent has failed to
10 enroll in, or complete any recovery program.

11 F. On October 4, 2000, another letter was sent to respondent by the Board
12 requiring him to contact the Managed Health Network (Diversion Program) (MHN)
13 within 15 days of receipt of the letter.

14 G. After the 15 day deadline, Respondent contacted MHN on the
15 telephone on three occasions. During at least two of these telephone conversations,
16 respondent's speech was slurred and he appeared to be under the influence of alcohol or
17 drugs, therefore, the intake process could not be completed.

18 H. During the fourth telephone call, respondent was confronted with his
19 drinking and or drug problem and advised to stop working. Respondent refused.

20 I. Respondent's continued use of substances and the position he holds as a
21 pharmacist is unsafe and places the public at risk.

22 J. V. M., respondent's co-worker at Longs Drug Store, Escondido,
23 observed the smell of alcohol on respondent's breath several times between October and
24 December of 2000. Her declaration was signed on December 28, 2000.

25 K. S. S., another co-worker at Longs Drug Store, Escondido observed the
26 smell of alcohol on respondent's breath on several occasions between October and
27 December of 2000. Her declaration was signed on December 28, 2000.

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L. G.L., a third co-worker at Longs Drug, Escondido observed alcohol on respondent's breath from the time he first began working at Longs. She has also noticed his concentration level has diminished.

M. On April 17, 2001, respondent called in sick to work at Longs, Escondido. P.C., the Pharmacy Area Supervisor, called respondent on the telephone to discuss when he would be returning to work. During that conversation, Mr. Mendoza's speech was slurred, he was incoherent and sounded as if he were under the influence. When Mr. C. asked respondent for the name of his recovery program, respondent admitted he is not enrolled in any program and is not currently in treatment.

N. As of Tuesday, April 24, 2001, respondent appeared to be intoxicated; and he was not enrolled in any treatment program.

O. On April 24, 2001, respondent was terminated from his employment at Longs Drug Stores due to his apparent impaired condition and his inability to show proof of enrollment into any treatment program.

P. On April 25, 2001, Administrative Law Judge, Stephen Hjelt, issued an interim suspension order, suspending respondent's license due to the danger respondent represents to the public.

SECOND CAUSE FOR DISCIPLINE

(Self-administration of Controlled Substances/Alcohol)

11. Respondent is subject to disciplinary action under Code section 4301(h) in that he has self-administered drugs and or alcohol to such a degree as to represent a danger to the public, as alleged above in paragraphs 10A through and including paragraph 10P.

THIRD CAUSE FOR DISCIPLINE

(Conviction of More Than One Misdemeanor)

12. Respondent is subject to disciplinary action under Code section 4301(k) in that he has sustained more than one misdemeanor conviction, as alleged above in paragraphs 10A through and including paragraph 10P.

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

DATED: 5/24/01.

P. J. Harris

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

2Accusation.wpt 9/28/00
sll May 1, 2001

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