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7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:
13 ELIZABETH MOTA
14 520 Myrtlewood Court, Apt. 7
Escondido, CA
15 Pharmacy Tech License No. TCH 41109
16 Respondent.

Case No. 2636
OAH No. L-2004090213
**DEFAULT DECISION
AND ORDER**
[Gov. Code, §11520]

17 FINDINGS OF FACT

18 1. On or about July 23, 2004, Complainant Patricia F. Harris, in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
20 filed Accusation No. 2636 against Elizabeth Mota (Respondent) before the Board of Pharmacy.

21 2. On or about March 27, 2002, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number TCH 41109 to Elizabeth Mota. The Pharmacy Tech License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 May 31, 2005, unless renewed.

25 3. On or about July 28, 2004, Tess Bautista, an employee of the Department
26 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2636, Statement
27 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
28

1 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
2 is 520 Myrtlewood Court, Apt. 7, Escondido, CA, 92027. A copy of the Accusation, the related
3 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
4 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 August 12, 2004, Respondent signed and returned a Notice of
8 Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at
9 Respondent's address of record and it informed her that an administrative hearing in this matter
10 was scheduled for March 16, 2005. Respondent failed to appear at that hearing. A copy of
11 Respondent's Notice of Defense, the Notice of Hearing, and Declaration of Service are attached
12 hereto as Exhibit B, and are incorporated herein by reference.

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

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

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

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

23 8. 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 and B finds that the allegations in Accusation No. 2636 are true.

27 9. The total costs for investigation and enforcement are \$6,874.75 as of
28 March 15, 2005.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Elizabeth Mota has
3 subjected her Pharmacy Tech License No. TCH 41109 to discipline.

4 2. A copy of the Accusation and the related documents and Declaration of
5 Service are attached.

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

7 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
8 Tech License based upon the following violations alleged in the Accusation:

9 a. Respondent was convicted on December 4, 2003 of six counts of
10 unlawfully obtaining prescriptions for the Controlled Substance Vicodin and six counts of
11 unlawfully entering Med-Rx Pharmacy with the intent to commit theft. Respondent
12 phoned in six unauthorized prescriptions for Vicodin for herself from August 12, 2003 to
13 October 3, 2003 at Med-Rx Pharmacy.

14 b. Respondent was convicted on May 5, 2003 of unlawful possession of the
15 Controlled Substance Vicodin and unlawfully entering Walgreen's Pharmacy with the
16 intent to commit theft. Respondent phoned in unauthorized prescriptions for Vicodin for
17 herself to Walgreen's Pharmacy between January 17, 2003 and March 11, 2003 and
18 unlawfully entered Walgreen's Pharmacy. Respondent represented herself to be a
19 physician to obtain Vicodin. On March 12, 2003, Respondent unlawfully possessed
20 Vicodin, Alprazolam, & Phentermine.

21 c. On May 31, 2003, Respondent was arrested for obtaining controlled
22 substances by fraud and burglary. Respondent phoned in fraudulent, unauthorized
23 prescriptions to two different pharmacies and picked up unauthorized prescriptions seven
24 times for herself and for her husband, Marcos Mota, for Vicodin, Phentermine, Paxil, and
25 Carisprodol.

ORDER

IT IS SO ORDERED that Pharmacy Tech License No. TCH 41109, heretofore issued to Respondent Elizabeth Mota, is revoked.

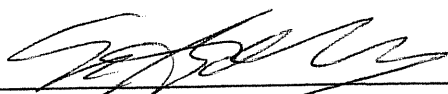
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant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

This Decision shall become effective on May 27, 2005.

It is so ORDERED April 27, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2636, Related Documents, and Declaration of Service

Exhibit B: Notice of Defense, Notice of Hearing, and Declaration of Service

DOJ docket number:03583110-sd2003700119
Mota.Default.wpd

Exhibit A
Accusation No. 2636,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2636

13 ELIZABETH MOTA
520 Myrtlewood Court Apt. 7
14 Escondido, CA 92027

A C C U S A T I O N

15 Pharmacy Tech License No. TCH 41109

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 March 27, 2002, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 41109 to Elizabeth Mota (Respondent). The License will
25 expire on May 31, 2005, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following sections of the Business
4 and Professions Code, the Health and Safety Code, and Penal Code.

5 STATUTORY PROVISIONS

6 BUSINESS AND PROFESSIONS CODE

7 4. Business and Professions Code Section 4060 states:

8 No person shall possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, or other authorized person.

10 5. Business and Professions Code Section 4300 states, in pertinent part:

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

12 6. Business and Professions Code Section 4301 states, in pertinent part:

13 The board shall take action against any holder of a license who is guilty of
14 unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the
15 following:

16 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
17 deceit, or corruption.

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

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter.

22 Every license issued may be suspended or revoked.

23 7. Pursuant to Business and Professions Code Section 4323, it is unlawful to
24 obtain a drug by falsely representing oneself to be a physician or other person who can lawfully
25 prescribe the drug.

26 8. Pursuant to Business and Professions Code Section 4324, it is unlawful to
27 forge a prescription or possess any drugs obtained by a forged prescription.

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1 9. Section 125.3 of the Business and Professions Code provides that the
2 Registrar may request the administrative law judge to direct a licentiate found to have committed
3 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
4 investigation and enforcement of the case.

5 HEALTH AND SAFETY CODE

6 10. "Hydrocodone" (DiHydrocodeinone or Vicodin) is a Schedule III
7 controlled substance as designated by Health and Safety Code section 11056(e)(4).

8 11. "Alprazolam" is a Schedule IV controlled substance as designated by
9 Health and Safety Code section 11057(d)(1).

10 12. "Phentermine" is a Schedule IV controlled substance as designated by
11 Health and Safety Code section 11057(f)(4).

12 13. Health and Safety Code section 11150 states, in pertinent part, that no
13 person other than a physician, or other authorized person, shall write or issue a prescription.

14 14. Health and Safety Code section 11152 states, in pertinent part, that no
15 person shall write, issue, fill, compound, or dispense a prescription that does not conform to this
16 division.

17 15. Health and Safety Code section 11153 states, in pertinent part, that:

18 (a) A prescription for a controlled substance shall only be issued for a
19 legitimate medical purpose by an individual practitioner acting in the usual course of his or her
20 professional practice.

21 16. Health and Safety Code section 11157 states that no person shall issue a
22 prescription that is false or fictitious in any respect.

23 17. Health and Safety Code section 11170 states that no person shall prescribe,
24 administer, or furnish a controlled substance for himself.

25 18. Health and Safety Code section 11171 states that no person shall prescribe,
26 administer, or furnish a controlled substance except under the conditions and in the manner
27 provided by this division.

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1 19. Health and Safety Code section 11173 states, in pertinent part, that:

2 (a) No person shall obtain or attempt to obtain controlled substances, or
3 procure or attempt to procure the administration of or prescription for controlled substances by
4 fraud, deceit, misrepresentation or subterfuge.

5 (b) No person shall make a false statement in any prescription, order, report,
6 or record, required by this division.

7 (c) No person shall, for the purpose of obtaining controlled substances, falsely
8 assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician
9 . . . or other authorized person.

10 20. Health and Safety Code section 11175 states that no person shall obtain or
11 possess a prescription that does not comply with this division, nor shall any person obtain a
12 controlled substance by means of a prescription which does not comply with this division or
13 possess a controlled substance obtained by such a prescription.

14 21. Health and Safety Code section 11180 states that no person shall obtain or
15 possess a controlled substance obtained by a prescription that does not comply with this division.

16 22. Pursuant to Health and Safety Code section 11350 (a), it is unlawful to
17 possess any controlled substance unless upon the written prescription of a physician, dentist,
18 podiatrist, or veterinarian licensed to practice in this state.

19 23. Pursuant to Health and Safety Code section 11375 (b)(2), it is unlawful to
20 possess any controlled substance unless upon the prescription of a physician, dentist, podiatrist,
21 or veterinarian licensed to practice in this state.

22 24. Pursuant to Health and Safety Code section 11377 (a), it is unlawful to
23 possess any controlled substance without a prescription.

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1 PENAL CODE

2 25. Pursuant to Penal Code section 459, it is unlawful to enter a building with
3 the intent to commit grand or petit larceny or any felony.

4 26. Penal Code section 460 states:

5 (a) Every burglary of an inhabited dwelling house . . . is burglary of the first
6 degree.

7 (b) All other kinds of burglary are of the second degree.

8 27. Penal Code section 1000 allows for deferred entry of judgment in certain
9 drug abuse cases.

10 FIRST CAUSE FOR DISCIPLINE

11 (Criminal Convictions)

12 December 4, 2003 Conviction

13 28. Respondent is subject to disciplinary action under Business and
14 Professions Code section 4301 in that on or about December 4, 2003, in a criminal proceeding
15 entitled *People v. Mota*, in San Diego Superior Court, Case No. SCN170265, Respondent was
16 convicted by plea of guilty of six counts of unlawfully obtaining prescriptions for the Controlled
17 Substance Hydrocodone (Vicodin) in violation of Business and Professions Code sections 4060
18 and 4324 and Health and Safety Code sections 11173(a), 11350(a), and 11377 and six counts of
19 unlawfully entering Med-Rx Pharmacy with the intent to commit theft in violation of Penal Code
20 section 459. The circumstances are as follows:

21 a. On or about October 3, 2003, Respondent phoned in an unauthorized
22 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
23 (Vicodin).

24 b. On or about October 4, 2003, Respondent entered Med-Rx Pharmacy and
25 attempted to pick up the unauthorized prescription for herself for the Controlled Substance
26 Hydrocodone (Vicodin).

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1 c. On or about September 17, 2003, Respondent phoned in an unauthorized
2 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
3 (Vicodin).

4 d. On or about September 17, 2003, Respondent entered Med-Rx Pharmacy
5 and picked up the unauthorized prescription for herself for the Controlled Substance
6 Hydrocodone (Vicodin).

7 e. On or about September 5, 2003, Respondent phoned in an unauthorized
8 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
9 (Vicodin).

10 f. On or about September 5, 2003, Respondent entered Med-Rx Pharmacy
11 and picked up the unauthorized prescription for herself for the Controlled Substance
12 Hydrocodone (Vicodin).

13 g. On or about September 3, 2003, Respondent phoned in an unauthorized
14 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
15 (Vicodin).

16 h. On or about September 3, 2003, Respondent entered Med-Rx Pharmacy
17 and picked up the unauthorized prescription for herself for the Controlled Substance
18 Hydrocodone (Vicodin).

19 i. On or about August 22, 2003, Respondent phoned in an unauthorized
20 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
21 (Vicodin).

22 j. On or about August 22, 2003, Respondent entered Med-Rx Pharmacy and
23 picked up the unauthorized prescription for herself for the Controlled Substance Hydrocodone
24 (Vicodin).

25 k. On or about August 12, 2003, Respondent phoned in an unauthorized
26 prescription to Med-Rx Pharmacy for herself for the Controlled Substance Hydrocodone
27 (Vicodin).

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1 l. On or about August 12, 2003, Respondent entered Med-Rx Pharmacy and
2 picked up the unauthorized prescription for herself for the Controlled Substance Hydrocodone
3 (Vicodin).

4 m. On or about December 11, 2003, Respondent was sentenced to three years
5 probation and served time in jail.

6 **May 5, 2003 Conviction**

7 29. Respondent is subject to disciplinary action under Business and
8 Professions Code section 4301 in that on or about May 5, 2003, in a criminal proceeding entitled
9 *People v. Mota*, in San Diego Superior Court, Case No. CN160261, Respondent was convicted
10 by plea of guilty of unlawfully possessing the Controlled Substance Hydrocodone (Vicodin) in
11 violation of Business and Professions Code sections 4060 and 4324 Health and Safety Code
12 sections 11173(a), 11350(a), and 11377 and unlawfully entering Walgreen's Pharmacy with the
13 intent to commit theft in violation of Penal Code section 459. The circumstances are as follows:

14 a. On or about and between January 17, 2003 and March 11, 2003,
15 Respondent phoned in unauthorized prescriptions to Walgreen's Pharmacy for herself the
16 Controlled Substance Hydrocodone (Vicodin).

17 b. On or about and between January 17, 2003 and March 11, 2003,
18 Respondent unlawfully and falsely assumed the title of and represented herself to be a physician
19 or other authorized person to obtain for herself the Controlled Substance Hydrocodone (Vicodin).

20 c. On or about March 12, 2003, Respondent unlawfully possessed the
21 Controlled Substance Hydrocodone (Vicodin).

22 d. On or about March 12, 2003, Respondent unlawfully possessed the
23 Controlled Substances Alprazolam and Phentermine.

24 e. On or about and between January 17, 2003 and March 11, 2003,
25 Respondent unlawfully entered Walgreen's Pharmacy with the intent to commit theft.

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1 f. On or about April 14, 2003, at Respondent's arraignment, Judge Daniel
2 Goldstein ordered that Respondent will be prohibited from practicing as a Pharmacy Technician,
3 either directly or indirectly, while on pretrial O.R. release or while on bail pending resolution of
4 this criminal proceeding or any Board of Pharmacy disciplinary proceeding.

5 g. On or about May 5, 2003, Respondent was granted a Penal Code section
6 1000 program for deferred entry of judgment to complete a drug court program.

7 h. On or about December 11, 2003, Respondent's Penal Code section 1000
8 program for deferred entry of judgment was terminated and the criminal proceedings were
9 reinstated as a result of Respondent's failure to successfully complete the drug court program.
10 Respondent was sentenced to three years probation.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct Relating to Controlled Substances)

13 30. Respondent has subjected her license to discipline under Business and
14 Professions Code section 4300 on the grounds of unprofessional conduct as defined in sections
15 4301 and 4324 of that code. While licensed as a Pharmacy Technician in California, Respondent
16 phoned in unauthorized prescriptions to Med-Rx Pharmacy for herself for the Controlled
17 Substance Hydrocodone (Vicodin) on August 12, 2003, August 22, 2003, September 3, 2003,
18 September 5, 2003, September 17, 2003, and October 3, 2003 in violation of Health and Safety
19 Code section 11350 (a) (possessing controlled substances obtained by unauthorized
20 prescriptions).

21 31. Respondent has subjected her license to discipline under Business and
22 Professions Code section 4300 on the grounds of unprofessional conduct as defined in sections
23 4301 and 4324 of that code. While licensed as a Pharmacy Technician in California, Respondent
24 phoned in unauthorized prescriptions to Walgreen's Pharmacy for herself for the Controlled
25 Substance Hydrocodone (Vicodin), Ibuprofen, and Carisoprodol on January 17, 2003, January
26 28, 2003, and February 21, 2003 in violation of Health and Safety Code section 11350(a)
27 (possessing controlled substances obtained by unauthorized prescriptions).

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1 32. Respondent has subjected her license to discipline under Business and
2 Professions Code section 4300 on the grounds of unprofessional conduct as defined in sections
3 4301 and 4324 of that code. While licensed as a Pharmacy Technician in California, Respondent
4 unlawfully and falsely assuming the title of and representing herself to be a physician or other
5 authorized person to obtain for herself the Controlled Substance Hydrocodone (Vicodin) in
6 violation of Health and Safety Code section 11170 (issuing controlled substance prescriptions for
7 herself).

8 33. Respondent has subjected her license to discipline under Business and
9 Professions Code section 4300 on the grounds of unprofessional conduct as defined in sections
10 4301 and 4324 of that code. While licensed as a Pharmacy Technician in California, on or about
11 March 12, 2003, Respondent unlawfully possessed the Controlled Substances Hydrocodone
12 (Vicodin), Alprazolam, and Phentermine in violation of Health and Safety Code section
13 11350(a) (possessing controlled substances obtained by unauthorized prescriptions).

14 **May 31, 2003 Arrest**

15 34. Respondent has subjected her license to discipline under Business and
16 Professions Code section 4300 on the grounds of unprofessional conduct as defined in sections
17 4301 and 4324 of that code. Respondent was arrested on or about May 31, 2003 for obtaining
18 controlled substances by fraud and burglary. The circumstances of Respondent's arrest are that
19 Respondent phoned in fraudulent, unauthorized prescriptions to two different pharmacies and
20 picked up unauthorized prescriptions seven times for herself and for her husband, Marcos Mota,
21 for the Controlled Substance Hydrocodone (Vicodin). On or about May 23, 2003, Respondent
22 picked up prescription drugs from Sav-On Drug Stores at 2427 E. Valley Parkway, Escondido
23 and Sav-On Drug Stores at 1655 S. Center City Parkway, Escondido. Respondent used
24 fraudulent phoned in prescriptions to obtain for herself and for her husband, Marcos Mota, the
25 Controlled Substances Hydrocodone (Vicodin) and Phentermine as well as Paxil, and
26 Carisprodol. Respondent obtained the fraudulently prescribed medications three times from the

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1 Sav-on Pharmacy on E. Valley Parkway and four times from the Sav-on Pharmacy on S. Center
2 City Valley Parkway in violation of Health and Safety Code section 11350(a) (possessing
3 controlled substances obtained by unauthorized prescriptions.)

4 PRAYER

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

- 7 1. Revoking or suspending Pharmacy Tech License Number TCH 41109,
8 issued to Elizabeth Mota;
- 9 2. Ordering Elizabeth Mota to pay the Board of Pharmacy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: 7/23/04

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15 
16 PATRICIA F. HARRIS
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

20 03583110-sd2003700119
21 Mota.Accusation Final Revision.wpd

1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
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Facsimile: (619) 645-2061

7 Attorneys for Complainant
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:
13 ELIZABETH MOTA
14 Respondent.

Case No. 2636

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

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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 Karen L. Gordon, within fifteen
22 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
23 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
24 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

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1 **Karen L. Gordon**
2 **Deputy Attorney General**
3 **110 West "A" Street, Suite 1100**
4 **San Diego, California 92101**

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

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

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

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

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

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

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

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

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

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

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

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

10 *****

11 SD2003700119

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

In the Matter of the Accusation Against:

ELIZABETH MOTA

Respondent.

Case No. 2636

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

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

In the Matter of the Accusation Against:

ELIZABETH MOTA

Respondent.

Case No. 2636

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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

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

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2073
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

13 ELIZABETH MOTA

14 Respondent.

Case No. 2636

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

15
16 TO RESPONDENT:

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

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

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

1 omission of the Respondent as to this person is the basis for the administrative
2 proceeding;

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

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

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

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

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

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

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

28 ///

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

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

DATED: July 28, 2004

BILL LOCKYER, Attorney General
of the State of California



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

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

SECTION 11507.5: Exclusivity of discovery provisions

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

SECTION 11507.6: Request for discovery

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

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

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

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

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

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

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

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

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

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

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

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

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

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

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

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

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

In the Matter of the Accusation Against: Elizabeth Mota
Case No. 2636

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 July 28, 2004, 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 **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West "A" Street, Suite 1100, San Diego, California 92101, addressed as follows:

Elizabeth M. Mota
520 Myrtlewood Court, Apt. 7
Escondido, CA 92027
7000 0520 0025 1939 7181

Courtesy Copy Only:

Patricia F. Harris, Executive Officer
Board of Pharmacy
400 R Street, Suite 4070
Sacramento, ca 95814-6200

I declare under penalty of perjury that the above is true and correct and that this declaration is true and correct.

Tess Bautista
Declarant

80031848.wpd

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> <i>C. DeDelesa</i> <input type="checkbox"/> Age <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) JUL C. Date 28 2004</p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p align="center">Elizabeth M. Mota 520 Myrtlewood Court, Apt. 7 Escondido, CA 92027</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		7000 0520 0025 1939 7181	
PS Form 3811, February 2004		Domestic Return Receipt	

Exhibit B

Notice of Defense,
Notice of Hearing, and
Declaration of Service

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

In the Matter of the Accusation Against:

ELIZABETH MOTA

Respondent.

Case No. 2636

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: 8-12-04

Respondent's Name

Elizabeth Mota

Respondent's Signature

Elizabeth Mota

Respondent's Mailing Address

520 Myrtlewood Ct #17

City, State and Zip Code

Escondido, Ca. 92027

Respondent's Telephone Number

760-294-4463

Check appropriate box:

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

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

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

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

1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2073
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:
12 ELIZABETH MOTA
13
14 Respondent.
15
16

Case No. 2636
OAH No. L2004090213
NOTICE OF HEARING
[Gov. Code § 11509]
Hearing: Wednesday, March 16, 2005

17 YOU ARE HEREBY NOTIFIED that a hearing in this matter will commence on
18 **Wednesday, March 16, 2005 at 9 :00 a.m.** before an Administrative Law Judge at

19 **Office of Administrative Hearings**
1350 Front Street, Suite 6022
20 **San Diego, California 92101.**
21 **(619) 525-4475**

22 The hearing will be conducted before the Board of Pharmacy, Department of
23 Consumer Affairs by an Administrative Law Judge of the Office of Administrative Hearings,
24 upon the charges made in Accusation No. 2636 served upon you.

25 If you object to the place of hearing, you must notify the presiding officer within
26 ten (10) days after this notice is served on you. Failure to notify the presiding officer within ten
27 (10) days will deprive you of a change in the place of hearing.

28 You may be present at the hearing. You have the right to be represented by an

1 attorney at your own expense. You are not entitled to the appointment of an attorney to represent
2 you at public expense. You are entitled to represent yourself without legal counsel. You may
3 present any relevant evidence, and will be given full opportunity to cross-examine all witnesses
4 testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of
5 witnesses and the production of books, documents, or other things by applying to the Office of
6 Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, California 92101, telephone:
7 (619) 525-4475.

8 INTERPRETER: Pursuant to section 11435.20 of the Government Code, the
9 hearing shall be conducted in the English language. If a party or a party's witness does not
10 proficiently speak or understand the English language and before commencement of the hearing
11 requests language assistance, an agency subject to the language assistance requirement in section
12 11435.15 of the Government Code shall provide a certified interpreter or an interpreter approved
13 by the administrative law judge conducting the proceedings. The cost of providing the
14 interpreter shall be paid by the agency having jurisdiction over the matter if the administrative
15 law judge or hearing officer so directs, otherwise by the party for whom the interpreter is
16 provided. If you or a witness require the assistance of an interpreter, ample advance notice of
17 this fact should be given to the Office of Administrative Hearings so that appropriate
18 arrangements can be made.

19 CONTINUANCES: Under section 11524 of the Government Code, the agency
20 may grant a continuance, but when an administrative law judge of the Office of Administrative
21 Hearings has been assigned to the hearing, no continuance may be granted except by him or her
22 or by the presiding Administrative Law Judge for good cause. When seeking a continuance, a
23 party shall apply for the continuance within ten (10) working days following the time the party
24 discovered or reasonably should have discovered the event or occurrence which establishes good
25 cause for the continuance. A continuance may be granted for good cause after the ten (10)
26 working days have lapsed only if the party seeking the continuance is not responsible for and has
27 made a good faith effort to prevent the condition or event establishing the good cause.

28 Continuances are not favored. If you need a continuance, immediately write or

1 call the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, California
2 92101, telephone: (619) 525-4475.

3 DATED: December 3, 2004

4

BILL LOCKYER, Attorney General
of the State of California

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KAREN L. GORDON
Deputy Attorney General

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Attorneys for Complainant

10 KLG:kc
SD2003700119
11 80044005.wpd

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

Case Name: **In the Matter of the Accusation Against: Elizabeth Mota**

Board of Pharmacy Case No.: 2636
OAH No.: L2004090213

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 December 3, 2004, I served the attached **Notice of Hearing** enclosed in a sealed envelope as certified mail with postage receipt requested, and another true copy of the **Notice of Hearing** sealed envelope as first class mail collection system at the Office

7160 3901 9848 7819 4324

TO: Elizabeth M. Mota

Elizabeth M. Mota
520 Myrtlewood Court, Apt. 7
Escondido, CA 92027
In Pro Per

Certified Mail Number
7160 3901 9848 7819 4324

2. Article Number	
 7160 3901 9848 7819 4324	
3. Service Type CERTIFIED MAIL	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature	DEC 4
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Agent <input type="checkbox"/> Address <input type="checkbox"/> Yes <input type="checkbox"/> No

1. Article Addressed to:
Elizabeth M. Mota
520 Myrtlewood Court, Apt. 7
Escondido, CA 92027

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is made in California.

Elizabeth Mota

Karen Gordon

Kim Cooney
Declarant

PS Form 3811, July 2001

Domestic Return Receipt

Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

cc: Office of Administrative Hearings, San Diego
Kim de Long, Enforce. Tech., Bd. of Pharmacy, Sacramento