

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN FITZGERALD, State Bar No. 112278
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) 645-2066
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2732

13 KENNETH H. MENDOZA, RPH
14 27793 Tierra Vista Rd
Temecula, CA 92592

**DEFAULT DECISION
AND ORDER**

15 Pharmacist License No. 35053

[Gov. Code, §11520]

16 Respondent.
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18 FINDINGS OF FACT

19 1. On or about February 11, 2004, Complainant Patricia F. Harris, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Petition to Revoke Probation No. 2732 against Kenneth H. Mendoza, RPH (Respondent)
22 before the Board of Pharmacy.

23 2. On or about December 11, 1979, the Board of Pharmacy (Board) issued
24 Pharmacist License No. 35053 to Respondent. The Pharmacist License expired on August 31,
25 2002, and has not been renewed.

26 3. On or about February 17, 2004, Tess Bautista, an employee of the Department of
27 Justice, served by Certified and First Class Mail a copy of the Petition to Revoke Probation No.
28 2732, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was and is 27793 Tierra Vista Rd, Temecula, CA 92592. A copy of the Petition to
3 Revoke Probation, the related documents, and Declaration of Service are attached as exhibit A,
4 and are incorporated herein by reference.

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

7 5. On or about February 24, 2004, the aforementioned documents were returned by
8 the U.S. Postal Service marked "Forwarding Address Expired." A copy of the postal returned
9 documents are attached hereto as exhibit B, and are incorporated herein by reference.

10 6. Business and Professions Code section 118 states, in pertinent part:

11 "(b) The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation
13 by order of the board or by order of a court of law, or its surrender without the
14 written consent of the board, shall not, during any period in which it may be
15 renewed, restored, reissued, or reinstated, deprive the board of its authority to
16 institute or continue a disciplinary proceeding against the licensee upon any
17 ground provided by law or to enter an order suspending or revoking the license
18 or otherwise taking disciplinary action against the license on any such ground."

19 7. Government Code section 11506 states, in pertinent part:

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

25 8. Respondent failed to file a Notice of Defense within 15 days after service upon
26 him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits
27 of Petition to Revoke Probation No. 2732.

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1 9. California Government Code section 11520 states, in pertinent part:
2 "(a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express
4 admissions or upon other evidence and affidavits may be used as evidence
5 without any notice to respondent."

6 10. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on
8 Respondent's express admissions by way of default and the evidence before it, contained in
9 exhibits A and B finds that the allegations in Petition to Revoke Probation No. 2732 are true.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Kenneth H. Mendoza, RPH
12 has subjected his Pharmacist License No. 35053 to discipline.

13 2. A copy of the Petition to Revoke Probation and the related documents and
14 Declaration of Service are attached.

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

16 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
17 based upon the following violations alleged in the Petition to Revoke Probation:

18 a. Respondent has failed to comply with probationary conditions 2, 5, 9, and 10.

19 b. The original cost recovery amount of \$3,600 from underlying Accusation No.
20 2383 remains due and owing to the Board.

21 ORDER

22 IT IS SO ORDERED that Pharmacist License No. 35053, heretofore issued to
23 Respondent Kenneth H. Mendoza, RPH, is revoked.

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

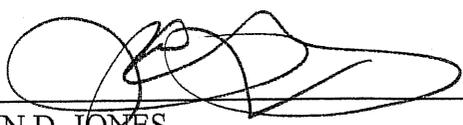
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This Decision shall become effective on April 25, 2004.

It is so ORDERED March 26, 2004

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
JOHN D. JONES
Board President

Attachments:

- Exhibit A: Petition to Revoke Probation No.2732, Related Documents, and Declaration of Service
- Exhibit B: Postal Return Documents

Exhibit A

Petition to Revoke Probation No. 2732,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN FITZGERALD, State Bar No. 112278
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) 645-2066
Facsimile: (619) 645-2061

7 Attorneys for Complainant

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

11 In the Matter of the Petition to Revoke Probation
12 Against:

Case No. 2732

13 KENNETH H. MENDOZA, RPH
27793 Tierra Vista Rd
14 Temecula, CA 92592

**PETITION TO REVOKE
PROBATION**

15 Pharmacist License No. 35053

16 Respondent.

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18 Complainant alleges:

19 PARTIES

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

23 2. On or about December 11, 1979, the Board of Pharmacy issued Pharmacist
24 License No. 35053 to Kenneth H. Mendoza, RPH (Respondent). The license expired on August
25 31, 2002, and has not been renewed.

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

DATED: 2/11/04

P. J. Harris

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

Exhibit A
Decision and Order
Board of Pharmacy Case No. 2383

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

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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4 San Diego, California 92101

5 P.O. Box 85266
San Diego, California 92186-5266
6 Telephone: (619) 645-2078
Facsimile: (619) 645-2061

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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:

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

15 Original Pharmacist License No. RPH 35053

16 Respondent.
17

2383
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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1 **2. REHABILITATION PROGRAM**

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

7 **3. PETITION FOR TERMINATION OF SUSPENSION**

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

12 **4. OBEY ALL LAWS**

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

15 **5. REPORTING TO THE BOARD**

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

19 **6. INTERVIEW WITH THE BOARD**

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

24 **7. COOPERATION WITH BOARD STAFF**

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

1 **8. PEER REVIEW**

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

3 **9. CONTINUING EDUCATION**

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

6 **10. REIMBURSEMENT OF BOARD COSTS**

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

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

14 **11. STIPULATION MONITORING COSTS**

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

20 **12. STATUS OF LICENSE**

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

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

26 **13. NOTIFICATION OF MAILING/ADDRESS CHANGE**

27 Within ten (10) days of a change of mailing address, respondent shall notify the
28 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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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


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

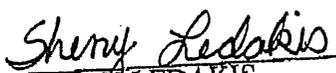

CHAD CALABRIA, ESQ.
Attorney for Respondent

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.

20 DATED: August 13, 2001

BILL LOCKYER, Attorney General
of the State of California


SHERRY LEDAKIS
Deputy Attorney General
Attorneys for Complainant

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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
110 West "A" Street, Suite 1100
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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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1 L. G.L., a third co-worker at Longs Drug, Escondido observed alcohol on
2 respondent's breath from the time he first began working at Longs. She has also
3 noticed his concentration level has diminished.

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

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

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

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

18 SECOND CAUSE FOR DISCIPLINE

19 (Self-administration of Controlled Substances/Alcohol)

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

23 THIRD CAUSE FOR DISCIPLINE

24 (Conviction of More Than One Misdemeanor)

25 12. Respondent is subject to disciplinary action under Code section 4301(k)
26 in that he has sustained more than one misdemeanor conviction, as alleged above in paragraphs
27 10A through and including paragraph 10P.

28 ///

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

DATED: 5/24/01

P. F. 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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1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN FITZGERALD, State Bar No. 112278
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) 645-2066
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 Petition to Revoke Probation
Against:

13 KENNETH H. MENDOZA, RPH

14 Respondent.
15

Case No. 2732

STATEMENT TO RESPONDENT

[Gov. Code §§ 11503, 11505, subd. (b)]

16
17 TO RESPONDENT:

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

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

27 ///

28 ///

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

4 **Susan Fitzgerald**
5 **Deputy Attorney General**
6 **110 West "A" Street, Suite 1100**
7 **San Diego, California 92101**

8 **P.O. Box 85266**
9 **San Diego, California 92186-5266.**

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

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

17 If you file any Notice of Defense within the time permitted, a hearing will be held
18 on the charges made in the Petition to Revoke Probation.

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

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

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

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NOTICE REGARDING STIPULATED SETTLEMENTS

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

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

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General Susan Fitzgerald at the earliest opportunity.

statement to respondent.wpt 7/24/01

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

In the Matter of the Petition to Revoke Probation
Against:

KENNETH H. MENDOZA, RPH

Respondent.

Case No. 2732

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 Petition to Revoke Probation; 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 Petition to Revoke Probation.

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 Petition to Revoke Probation 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 Petition to Revoke Probation
Against:

KENNETH H. MENDOZA, RPH

Respondent.

Case No. 2732

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 Petition to Revoke Probation; 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 Petition to Revoke Probation.

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 Petition to Revoke Probation 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 SUSAN FITZGERALD, State Bar No. 112278
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) 645-2066
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 Petition to Revoke Probation
Against:

13 KENNETH H. MENDOZA, RPH

14 Respondent.
15

Case No. 2732

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

16
17 TO RESPONDENT:

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

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

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

28 ///

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

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

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

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

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

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

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

26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which

28 ///

1 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
2 work product.

3 Your response to this Request for Discovery should be directed to the undersigned
4 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
5 **30 days after service** of the Petition to Revoke Probation.

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

9
10 DATED: February 17, 2004

11 BILL LOCKYER, Attorney General
12 of the State of California

13 

14
15

SUSAN FITZGERALD
Deputy Attorney General

16 Attorneys for Complainant

17
18 Req for discover.wpt 10/31/00

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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 BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

In the Matter of the Petition to Revoke Probation Against: Kenneth H. Mendoza, RPH
Agency Case No. 2732

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 February 17, 2004, I served the attached **Petition to Revoke Probation, 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 **Petition to Revoke Probation, 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, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Kenneth H. Mendoza, RPH
27793 Tierra Vista Rd
Temecula, CA 92592
7000 0520 0025 1940 1055**

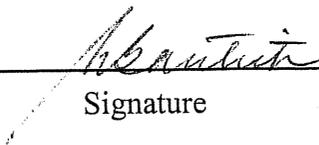
Courtesy Copy Only:

**Patricia Harris
Executive Officer
Board of Pharmacy
400 R Street, Suite 4070
Sacramento, CA 95814**

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 February 17, 2004, at San Diego, California.

TESS BAUTISTA

Typed Name



Signature

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 0520 0025 1940 3055

[Redacted area]

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Recipient's Name *(Please Print Clearly) (To be completed by mailer)*

Street, Apt. No.; or P.O. Box No.
City, State, ZIP+ 4

Kenneth H. Mendoza, RPH
27793 Tierra Vista Rd
Temecula, CA 92592

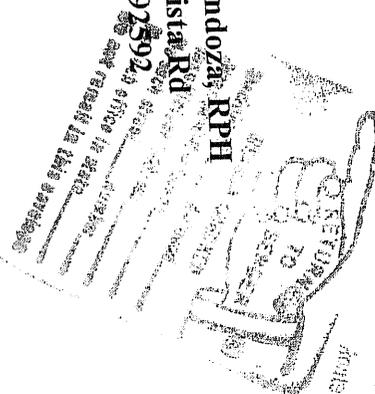
Exhibit B
Postal Return Documents

SUSAN FITZGERALD

FIRST CLASS MAIL

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

Kenneth H. Mendoza, RPH
27793 Tierra Vista Rd
Temecula, CA 92592



POSTAGE WILL BE PAID BY ADDRESSEE
NO POSTAGE NEEDED IF MAILED IN THE UNITED STATES
FIRST CLASS MAIL PERMIT NO. 100 SAN DIEGO, CA
POSTAGE WILL BE PAID BY ADDRESSEE
NO POSTAGE NEEDED IF MAILED IN THE UNITED STATES

12:06 PM 23 FEB 1997

ATTORNEY GENERAL
SAN DIEGO

550T 046T 5200 0250 0002



5.80

METER 41621



SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Kenneth H. Mendoza, RPH
27793 Tierra Vista Rd
Temecula, CA 92592

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Agent
 Addressee

C. Date of Delivery

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

3. Service Type

- Certified Mail
- Registered
- Insured Mail

- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number
(Transfer from service label)

7000 0520 0025 1940 1055

PS Form 3811, August 2001

Domestic Return Receipt

2ACPR1-03-P-4081

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Kenneth H. Mendoza, RPH
27793 Tierra Vista Rd
Temecula, CA 92592

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

B. Received by (Printed Name)

Addressee

C. Date of Delivery

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

Yes
 No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number
(Transfer from service label)

7000 0520 0025 1940 1055

PS Form 3811, August 2001

Domestic Return Receipt

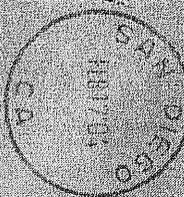
24CPRI-03-P-4081

SUSAN FITZGERALD

ATTORNEY GENERAL
SAN DIEGO

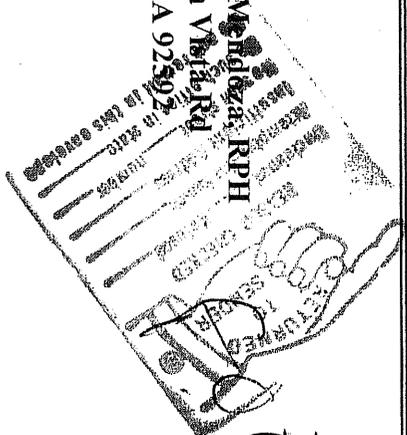
2005 FEB 23 AM 9:21

FIRST CLASS MAIL



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

Kenneth H. McRae
27793 Tierra Vista Rd
Temecula, CA 92592



Handwritten: E
Postage meter: 01778