

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-6375
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2855

11 DAVID MICHAEL RODRIGUEZ
1320 Pico Street
12 San Fernando, CA 91340

**DEFAULT DECISION
AND ORDER**

13 Original Pharmacy Technician Registration No.
TCH 7121

[Gov. Code, §11520]

14 Respondent.
15

16 FINDINGS OF FACT

17 1. On or about July 28, 2005, Complainant Patricia F. Harris, in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
19 State of California (Board), filed Accusation No. 2855 against David Michael Rodriguez
20 (Respondent) before the Board.

21 2. On or about May 3, 1993, the Board issued Original Pharmacy Technician
22 Registration No. TCH 7121 to Respondent. The Original Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on July
24 31, 2006, unless renewed.

25 3. On or about August 2, 2005, Judi Baerresen, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
27 2855, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
28 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is 1320 Pico Street, San Fernando, CA 91340. A copy of the Accusation, the
2 related documents, and Declaration of Service are attached as Exhibit A, and are incorporated
3 herein by reference.

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

6 5. In or about August, 2005, the aforementioned documents were returned by
7 the U.S. Postal Service marked "Unclaimed", after three attempts on August 3, 2005, August 8,
8 2005 and August 22, 2005. A copy of the postal returned documents are attached hereto as
9 Exhibit B, and are incorporated herein by reference.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service
16 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
17 Accusation No. 2855.

18 8. 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 9. Pursuant to its authority under Government Code section 11520, the Board
24 finds Respondent is in default. The Board will take action without further hearing and, based on
25 Respondent's express admissions by way of default and the evidence before it, contained in
26 Exhibits A and B finds that the allegations in Accusation No. 2855 are true.

27 10. The total costs for investigation and enforcement are \$1,093.00 as of
28 November 10, 2005.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent David Michael
3 Rodriguez has subjected his Original Pharmacy Technician Registration No. TCH 7121 to
4 discipline.

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

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

8 4. The Board is authorized to revoke Respondent's Original Pharmacy
9 Technician Registration based upon the following violations alleged in the Accusation:

10 a. Business and Professions Code section 4301, subdivision (j) -
11 possession of a controlled substance for sale;

12 b. Business and Professions Code section 4301, subdivision (f) - act
13 involving moral turpitude, dishonesty, fraud, deceit, or corruption.

14 ORDER

15 IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH
16 7121, heretofore issued to Respondent David Michael Rodriguez, is revoked.

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

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27 60110441.wpd/DOJ docket number:LA2005500839

28 Attachments: Exhibit A: Accusation No.2855, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

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

In the Matter of the Accusation Against:

Case No. 2855

David Michael Rodriguez

Default Decision and Order

Pharmacy Technician Registration No. TCH 7121

Respondent.

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DECISION AND ORDER

The attached Default Decision and 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 18, 2006.

It is so ORDERED on December 19, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2855,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
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BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2855

12 DAVID MICHAEL RODRIGUEZ
13 1320 Pico Street
San Fernando, CA 91340

A C C U S A T I O N

14 Original Pharmacy Technician Registration No. TCH 7121

15 Respondent.

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about May 3, 1993, the Board issued Original Pharmacy Technician
23 Registration No. TCH 7121 to David Michael Rodriguez (Respondent). The Original Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2006, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board, under the authority of the
28 following laws. All section references are to the Business and Professions Code unless otherwise

1 indicated.

2 4. Section 4300 permits the Board to take disciplinary action to suspend or
3 revoke a license issued by the Board.

4 5. Section 4301 states, in pertinent part:

5 “The board shall take action against any holder of a license who is guilty of
6 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
7 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
8 following:

9

10 “(f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
12 otherwise, and whether the act is a felony or misdemeanor or not.

13

14 “(j) The violation of any of the statutes of this state or of the United States
15 regulating controlled substances and dangerous drugs.”

16 6. Section 4060 states:

17 ““No person shall possess any controlled substance, except that furnished to a
18 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or
19 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
20 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
21 Section 3502.1, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
22 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
23 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-midwife, nurse
25 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
26 and address of the supplier or producer.

27 “Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
28 or a physician assistant to order his or her own stock of dangerous drugs and devices.”

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

5 DANGEROUS DRUG / CONTROLLED SUBSTANCE

6 8. Methamphetamine is a Schedule II controlled substances as defined in
7 Health and Safety Code section 11055(d)(2), and is categorized as a dangerous drug pursuant to
8 section 4022.

9 FIRST CAUSE FOR DISCIPLINE

10 (Possession of a Controlled Substance for Sale)

11 9. Respondent is subject to disciplinary action under sections 4300 and 4301
12 (j), on the grounds of unprofessional conduct, for violating section 4060 and Health and Safety
13 Code section 11378, in that Respondent was in possession of a controlled substance and
14 dangerous drug - methamphetamine for sale. The circumstances are as follows:

15 10. On or about January 5, 2004, Los Angeles Police Department officers
16 arrested Respondent for possession of a controlled substance for sale after Respondent admitted
17 to be in possession of "Meth" for sale.

18 SECOND CAUSE FOR DISCIPLINE

19 (Act Involving Moral Turpitude)

20 11. Respondent is subject to disciplinary action under sections 4300 and 4301
21 (f), on the grounds of unprofessional conduct, in that Respondent committed an act involving
22 moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as set forth in
23 paragraph 11 above.

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1 PRAYER

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

4 A. Revoking or suspending Original Pharmacy Technician Registration No.
5 TCH 7121, issued to David Michael Rodriguez.

6 B. Ordering David Michael Rodriguez to pay the Board of Pharmacy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 C. Taking such other and further action as deemed necessary and proper.

10 DATED: 7/28/05

11
12 *P. J. Harris*

13 PATRICIA F. HARRIS
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California

18 Complainant

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1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
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Telephone: (213) 897-6375
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2855

11 DAVID MICHAEL RODRIGUEZ,

STATEMENT TO RESPONDENT

12 Respondent.

[Gov. Code §§ 11504, 11505(b)]

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15 TO RESPONDENT:

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

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

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

26 **Linda L. Sun**
27 **Deputy Attorney General**
Ronald Reagan Building
28 **300 South Spring Street, Suite 1702**
Los Angeles, CA 90013.

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

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

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

10 The hearing may be postponed for good cause. If you have good cause, you are
11 obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los
12 Angeles, California 90013, within ten (10) working days after you discover the good cause.
13 Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a
14 postponement.

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

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

21 **NOTICE REGARDING STIPULATED SETTLEMENTS**

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

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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 Linda L. Sun at the earliest opportunity.

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1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
3 California Department of Justice
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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:
11 DAVID MICHAEL RODRIGUEZ,
12 Respondent.

Case No. 2855
REQUEST FOR DISCOVERY
[Gov. Code § 11507.6]

13
14 TO RESPONDENT:

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

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

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

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

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

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

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

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

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

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


26 Your response to this Request for Discovery should be directed to the undersigned
27 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
28 **30 days after service** of the Accusation.

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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: 8/2/05

BILL LOCKYER, Attorney General
of the State of California



LINDA L. SUN
Deputy Attorney General

Attorneys for Complainant

60090225.wpd

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

In the Matter of the Accusation Against: **DAVID MICHAEL RODRIGUEZ**
Board of Pharmacy Case No. 2855

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 August 2, 2005, I served the attached **Accusation, Statement to Respondent, Notice of Defense, 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, 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 300 So. Spring St., Los Angeles, CA 90013, addressed as follows:

DAVID MICHAEL RODRIGUEZ
1320 Pico Street
San Fernando, CA 91340

Certified Mail No.:
7001 0360 0003 2702 5264

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 August 2, 2005, at Los Angeles, California.

Judith A. Baerresen

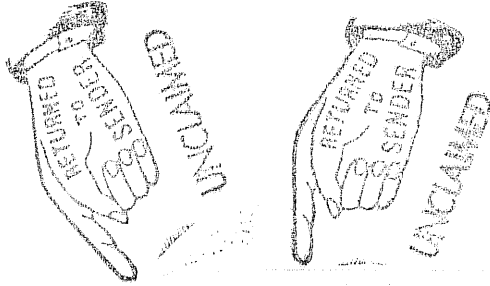
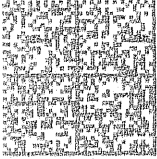
Typed Name


Signature

LINDA L. SUN, DAG
03583110-LA2005500839
60090228

Exhibit B
Postal Return Documents

UNITED STATES POSTAGE
02 1A
0004329500
MAILED FROM ZIP



IF YOU WEIGHED TO THE RIGHT
YOUR ADDRESS IS NOT SORTED LINE

CERTIFIED MAIL



7001 0360 0003 2702 5264

LINDA L. SUN, DAG
State of California
DEPARTMENT OF JUSTICE
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

DAY MICHAEL RODRIGUEZ

1324 Pico Street
San Fernando, CA 91340

Handwritten signature and date: 8/18/99

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:

DAY MICHAEL RODRIGUEZ
1324 Pico Street
San Fernando, CA 91340

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

Agent

Addressee

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

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. 7001 0360 0003 2702 5264