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

Attorneys for Complainant

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

In the Matter of the Accusation Against: DAVID MICHAEL RODRIGUEZ 1320 Pico Street San Fernando, CA 91340 Original Pharmacy Technician Registration No. TCH 7121 Respondent.	Case No. 2855 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

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

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

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

which was and is1320 Pico Street, San Fernando, CA 91340. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

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

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

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

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

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

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

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

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

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

DETERMINATION OF ISSUES

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

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

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

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

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

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

ORDER

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

60110441.wpd/DOJ docket number:LA2005500839

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

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

In the Matter of the Accusation Against: **David Michael Rodriguez** Pharmacy Technician Registration No. TCH 7121 Respondent.	Case No. 2855 **Default Decision and Order**

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

BILL LOCKYER, Attorney General
of the State of California
LINDA L. SUN, State Bar No. 207108
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California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: DAVID MICHAEL RODRIGUEZ 1320 Pico Street San Fernando, CA 91340 Original Pharmacy Technician Registration No. TCH 7121 Respondent.	Case No. 2855 **ACCUSATION**

Complainant alleges:

PARTIES

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

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

JURISDICTION

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

indicated.

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

5. Section 4301 states, in pertinent part:

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

. . . .

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

. . . .

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

6. Section 4060 states:

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

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

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

DANGEROUS DRUG / CONTROLLED SUBSTANCE

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

FIRST CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance for Sale)

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

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

SECOND CAUSE FOR DISCIPLINE

(Act Involving Moral Turpitude)

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

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PRAYER

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

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

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

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

DATED: 7/28/05

P. F. Harris

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

Complainant

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BILL LOCKYER, Attorney General
of the State of California
LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: DAVID MICHAEL RODRIGUEZ, Respondent.	Case No. 2855 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

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

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

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

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

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

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

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

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

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

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

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.

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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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BILL LOCKYER, Attorney General
of the State of California
LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: DAVID MICHAEL RODRIGUEZ, Respondent.	Case No. 2855 **REQUEST FOR DISCOVERY** [Gov. Code § 11507.6]

TO RESPONDENT:

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

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

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

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

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 persons;

c. Statements of witnesses then proposed to be called by the Respondent 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 Respondent now proposes to offer in evidence;

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

f. Investigative reports made by or on behalf of the Respondent 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 Request for Discovery, "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.

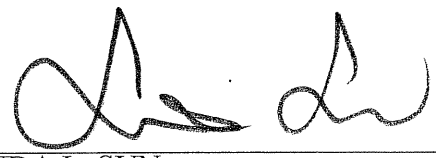
YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

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: 8/2/05

BILL LOCKYER, Attorney General
of the State of California



LINDA L. SUN
Deputy Attorney General

Attorneys for Complainant

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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.

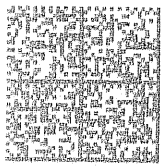
Judith A. Baerresen	Judith A. Baerresen
Typed Name	Signature

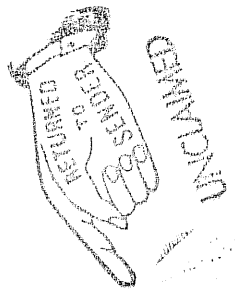
LINDA L. SUN, DAG
03583110-LA2005500839
60090228

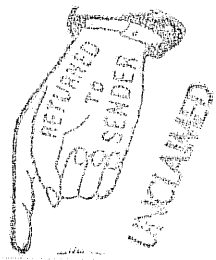
Exhibit B

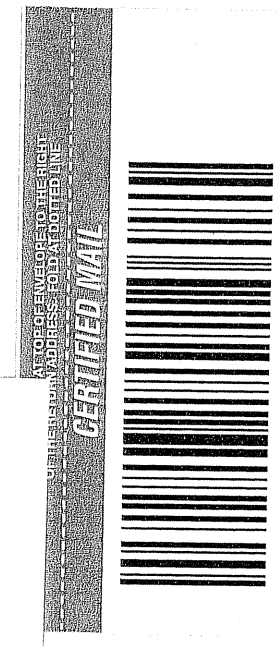
Postal Return Documents

UNITED STATES POSTAGE 02 1A 0004329500 MAILED FROM ZIP









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

DA[illegible] MICHA[illegible] RODR[illegible]UEZ
13[illegible] Pico Str[illegible]
[illegible]n Fe[illegible]o, C[illegible] 91[illegible]

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:

DA[illegible]D MICHA[illegible] RODRIGUEZ
13[illegible] Pico Stree[illegible]
San Fernando, C[illegible] 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

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952