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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KENNETH DEE MILAM 3604 Hemlock Ave. Ceres, CA 95307 Registered Nurse No. 476712 Respondent.	Case No. 2007-258 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 10, 2007, Complainant Ruth Ann Terry, M.P.H, R.N, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consum Affairs, filed Accusation No. 2007-258 against Kenneth Dee Milam (Respondent) before the Board o Registered Nursing.

2. On or about March 31, 1992, the Board of Registered Nursing (Board) issued Registered Nurse License No. 476712 to Respondent. The registered nurse license expired on January 31, 1998, and has not been renewed.

3. On or about April 26, 2007, Jessica Taylor, an employee of the Department of Justice, served by Certified Mail a copy of Accusation No. 2007-258, 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 is, 3604 Hemlock Ave., Ceres, CA 95307. 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. On or about June 7, 2007, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed." A copy of the envelope returned by the post office is attached as Exhibit B, and is incorporated herein by reference.

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

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

7. 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 hearing, but the agency in its discretion may nevertheless grant a hearing."

8. 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. 2007-258.

9. 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

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upon other evidence and affidavits may be used as evidence without any notice to respondent."

10. 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. 2007-258 are true.

11. The total costs for investigation and enforcement are $1,949.00 as of July 5, 2007.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kenneth Dee Milam has subjected his Registered Nurse License No. 476712 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 of Registered Nursing is authorized to revoke Respondent's registered nurse license based upon the following violations alleged in the Accusation:

a. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about November 3, 2003, Respondent possessed Methamphetamine, a controlled substance, in violation of Code section 4060, in that Respondent did not have a prescription for that controlled substance.

b. Respondent is subject to discipline under Code section 2761(a) on the grounds of unprofessional conduct as defined in Code section 2762(a) in that, from approximately May 2003 through November 2003, Respondent self-administered methamphetamine, a controlled substance, without lawful authority therefor.

ORDER

IT IS SO ORDERED that Registered Nurse License No. 476712, heretofore issued to Respondent Kenneth Dee Milam, is revoked.

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

This Decision shall become effective on October 1, 2007.

It is so ORDERED August 30, 2007.

LaFrancine W Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Milam.def.dec.30294611.wpd
DOJ docket number:SA2005104539

Attachments:

Exhibit A: Accusation No.2007-258, Related Documents, and Declaration of Service
Exhibit B: Copy of Envelope Returned by Post Office

Exhibit A

Accusation No. 2007-258,
Related Documents and Declaration of Service

EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KENNETH DEE MILAM** 3604 Hemlock Avenue Ceres, California 95307 Registered Nurse License No. 476712 Respondent.	Case No. 2007-258 **ACCUSATION**

Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about March 31, 1992, the Board issued Registered Nurse License Number 476712 ("license") to Kenneth Dee Milam ("Respondent"). The license expired on January 31, 1998, and has not been renewed.

JURISDICTION

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a

temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the lapsing (expiration) of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Code section 2811(b), provides, in pertinent part, that a license which has not been renewed shall expire. The expired license, however, may be reinstated within a period of eight years upon payment of fees owed. After the expiration of such eight-year period, the Board may, as a condition of reinstatement, require the applicant to pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

6. California Code of Regulations, title 16, section 1419.3 provides that a licensee may renew a license that has been expired for less than eight years upon payment of fees owed and proof of continuing education. A licensee may renew a license that has been expired for more than eight years upon payment of fees owed and proof of passage of the Board's current examination for licensure, or of licensure in another state.

STATUTORY PROVISIONS

7. Code section 2761(a) states, in pertinent part, that the Board may take disciplinary action against a licensed nurse for unprofessional conduct.

8. Code section 2762 states:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do the following:
>
> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or

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violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

10. "Methamphetamine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

BACKGROUND INFORMATION

11. On or about November 3, 2003, while driving a vehicle in the City of Ceres, California, Respondent was pulled over by law enforcement for a routine traffic stop. During the traffic stop, the officer asked Respondent if he had any drugs in his possession. Respondent admitted to the officer that he was in possession of Methamphetamine and that he had been using Methamphetamine for the past six months.

FIRST CAUSE FOR DISCIPLINE

(Possessed Controlled Substances)

12. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about November 3, 2003, Respondent possessed Methamphetamine, a controlled substance, in violation of Code section 4060, in that Respondent did not have a prescription for that controlled substance.

SECOND CAUSE FOR DISCIPLINE

(Self-Administered Controlled Substances)

13. Respondent is subject to discipline under Code section 2761(a) on the grounds of unprofessional conduct as defined in Code section 2762(a) in that, from approximately May 2003 through November 2003, Respondent self-administered methamphetamine, a controlled substance, without lawful authority therefor.

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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 Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 476712, issued to Kenneth Dee Milam;

2. Ordering Kenneth Dee Milam to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 4/10/07

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2005104539

EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KENNETH DEE MILAM Respondent.	Case No. 2007-258 **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.

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

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

DATED: 4-26-07

EDMUND G. BROWN JR., Attorney General
of the State of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Lorrie Yost

LORRIE M. YOST
Deputy Attorney General

Attorneys for Complainant

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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KENNETH DEE MILAM Respondent.	Case No. 2007-258 **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 Registered Nursing 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 Lorrie M. Yost, 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:

Lorrie M. Yost
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, California 94244-2550.

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, Attn: General Jurisdiction, 2349 Gateway Oaks, Suite 200, Sacramento, CA 95833-4231, 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

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charged and the discipline to be imposed. Such a stipulation would have to be approved by the Board of Registered Nursing 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 is enclosed.

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 Lorrie M. Yost at the earliest opportunity.

DATED: 4-26-07

EDMUND G. BROWN JR., Attorney General
of the State of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Lorrie Yost

LORRIE M. YOST
Deputy Attorney General

Attorneys for Complainant

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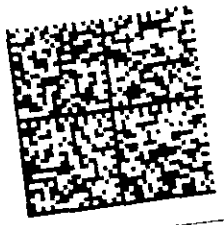
Exhibit B

Copy of Envelope Returned by Post Office

CERTIFIED MAIL

7160 3901 9845 0327 7934

RETURN RECEIPT REQUESTED



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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Kenneth Dee Milam
3604 Hemlock Ave.
[redacted]

4/28/07
5/24
6/4

RETURNED

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Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7160 3901 9845 0327 7934

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Kenneth Dee Milam
3604 Hemlock Ave.
[redacted]

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?
If YES, enter delivery address below:

☐ Yes
☐ No

SA2005104539/Milam
AccPkt
Lorrie M. Yost

PS Form 3811, January 2005 Domestic Return Receipt

Thank you for using Return Receipt Service