

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of:

JON ALESSI  
Holder of License No. 4058  
for Pharmacy Technician  
In the State of Arizona,

Respondent

Investigative Case No. 05-0029-PHR

CONSENT AGREEMENT AND ORDER  
FOR SUSPENSION AND PROBATION

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901, *et seq.* and 41-1092.07(F)(5), JON ALESSI ("Respondent"), holder of Pharmacy Technician License No. 4058 to work as a pharmacy technician in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against him.

1 5. Respondent understands this Consent Agreement deals with Board Investigative Case  
2 No. 05-0029-PHR involving allegations of unprofessional conduct against Respondent. The  
3 investigation into these allegations against Respondent shall be concluded upon the Board's  
4 adoption of this Consent Agreement.

5 6. Respondent understands that this Consent Agreement does not constitute a dismissal  
6 or resolution of any other matters currently pending before the Board, if any, and does not constitute  
7 any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other  
8 pending or future investigation, action or proceeding. Respondent also understands that acceptance of  
9 this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from  
10 instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this  
11 Consent Agreement.

12 7. All admissions made by Respondent in this Consent Agreement are made solely for the  
13 final disposition of this matter, and any related administrative proceedings or civil litigation involving  
14 the Board and Respondent. Therefore, any admissions made by Respondent in this Consent  
15 Agreement are not intended for any other use, such as in the context of another regulatory agency's  
16 proceedings, or civil or criminal proceedings, whether in the State of Arizona or in any other state or  
17 federal court.

18 8. Respondent acknowledges and agrees that, upon signing this Consent Agreement and  
19 returning this document to the Board's Executive Director, he may not revoke his acceptance of the  
20 Consent Agreement or make any modifications to the document regardless of whether the Consent  
21 Agreement has been signed by the Executive Director. Any modification to this original document is  
22 ineffective and void unless mutually agreed by the parties in writing.

23 9. Respondent understands that the Consent Agreement shall not become effective unless  
24 and until adopted by the Board and signed by its Executive Director.

25 10. If a court of competent jurisdiction rules that any part of this Consent Agreement is  
26 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full

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1 force and effect.

2 11. Respondent understands and agrees that if the Board does not adopt this Consent  
3 Agreement, he will not assert as a defense that the Board's consideration of this Consent  
4 Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

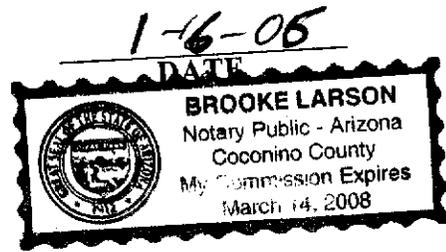
5 12. Respondent understands that this Consent Agreement is a public record that may be  
6 publicly disseminated as a formal action of the Board and may be reported as required by law to  
7 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

8 13. Respondent understands that any violation of this Consent Agreement constitutes  
9 unprofessional conduct under A.R.S. § 32-1901.01 (C) (16), ([v]iolated a formal order, terms  
10 of probation, a consent agreement or a stipulation issued or entered into by the board or its executive  
11 director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.01 (A)  
12 (1).

13 **REVIEWED and ACCEPTED BY:**

14 Jon Alessi  
15 JON ALESSI

16 Brooke Larson  
17 Notary Public



18 **FINDINGS OF FACT**

19 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the  
20 matters described herein. Respondent admits to the following Findings of Fact:

21 14. The Board is the duly constituted authority for the regulation and control of the practice  
22 of pharmacy in the State of Arizona.

23 15. The Board possesses jurisdiction over the subject matter and over Respondent as a  
24 licensee of the Board, under A.R.S. § 32-1901, *et seq.*  
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1           16.     Respondent is the holder of Pharmacy Technician License No. 4058 which permits him  
2 to work as a pharmacy technician in the State of Arizona.

3           17.     On March 24, 2005, Respondent was interviewed by Joel Crowley, Safeway Store  
4 Manager. During the interview, Respondent knowingly and voluntarily admitted to stealing "a few"  
5 Hydrocodone with APAP (Vicodin®) tablets, a Class III Controlled Substance, as defined in A.R.S. §  
6 36-2514, from Safeway Pharmacy #2029 to treat a headache, while working as a pharmacy technician.  
7  
8     **(See Exhibit A – Respondent's Signed Admission Found in Safeway Employee Investigation,**  
9     **Dated March 25, 2005).**

10           18.     On March 25, 2005, Respondent knowingly and voluntarily admitted to John Joy,  
11 Safeway Security Investigator, that he had stolen for his personal use, a total of seven (7) or eight (8)  
12 Hydrocodone with APAP (Vicodin®) tablets, a Class III Controlled Substance, as defined in A.R.S. §  
13 36-2514, for his personal use from Safeway Pharmacy #2029 to treat a headache, while working as a  
14 pharmacy technician at Safeway Pharmacy #2029. **(See Exhibit A).**

15           19.     On April 17, 2005, Steve Lerch, Safeway's Director of Pharmacy Operations, submitted  
16 to the Board a Drug Enforcement Administration ("DEA") Form 106 (Theft or Loss of Controlled  
17 Substances) reporting a loss of 2400 tablets of various Hydrocodone with APAP products from Safeway  
18 Pharmacy # 2029. **(See Exhibit B – DEA 106 Form, Dated April 17, 2005).**

19           20.     On August 12, 2005, a Board Compliance Officer conducted an audit of the following  
20 Hydrocodone products at Safeway Pharmacy #2029 for the period from the close of business on April  
21 30, 2004 to the open of business on May 1, 2005. The results of the audit are tabulated on the following  
22 page:  
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24  
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<u>Drug Name &amp; Strength ( mg.)</u>	<u># Dosage Units Short</u>	<u>Per Cent Short</u>
Hydrocodone with APAP 5/325	58	16.1 %
Hydrocodone with APAP 5/500 capsules	22	24.4 %
Hydrocodone with APAP 5/500 tablets	81	0.18 %
Hydrocodone with APAP 7.5/325	647	29.5 %
Hydrocodone with APAP 7.5/500	884	3.1 %
Hydrocodone with APAP 7.5/650	29	13.2 %
Hydrocodone with APAP 7.5/750	682	6.9 %
Hydrocodone with APAP 10/325	883	15.7 %
Hydrocodone with APAP 10/500	639	11.4 %
Hydrocodone with APAP 10/650	160	26.4 %
Hydrocodone with APAP 10/660	183	37.3 %
TOTAL = 4267		

**CONCLUSIONS OF LAW**

21. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona, under A.R.S. § 32-1901, *et seq.*

22. The conduct and circumstances described in the above Findings of Fact constitute violations of A.R.S. § 32-1927.01 (A) (1) to wit:

A. A pharmacy technician or pharmacy technician trainee is subject to disciplinary action by the board for any of the following:

1. The board determines that the licensee has committed an act of unprofessional conduct.

///

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1 23. The conduct and circumstances described in the above Findings of Fact constitute  
2 unprofessional conduct and are grounds for disciplinary action under A.R.S. §§ 32-1901.01 (C) (8) and  
3 (C) (15) to wit:

4  
5 **A.R.S. § 32-1901.01 (C) (8):** In this chapter, unless the context otherwise requires, for the  
6 purposes of disciplining a pharmacy technician or pharmacy technician trainee,  
7 "unprofessional conduct" means the following, whether occurring in this state or  
8 elsewhere:

9 Violating a federal or state law or administrative rule relating to marijuana,  
10 prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor  
11 chemicals when determined by the board or by conviction in a federal or state court.

12 **A.R.S. 32-1901.01 (C) (15):** In this chapter, unless the context otherwise requires, for the  
13 purposes of disciplining a pharmacy technician or pharmacy technician trainee,  
14 "unprofessional conduct" means the following, whether occurring in this state or  
15 elsewhere:

16 Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the  
17 violation of, or conspiring to violate, this chapter.

18 24. The conduct and circumstances described in the above Findings of Fact constitute  
19 unprofessional conduct and are grounds for disciplinary action under A.R.S. § § 32-1968 (A) and  
20 A.R.S. 36-2525 (H) to wit:

21 **A.R.S. § 32-1968 (A):** A prescription-only drug shall be dispensed only under one of the  
22 following conditions:

- 23 1. By a medical practitioner in conformance with section 32-1921.
- 24 2. On a written prescription order bearing the prescribing medical practitioner's manual  
25 signature.
- 26 3. On an electronically transmitted prescription order containing the prescribing  
medical practitioner's electronic or digital signature that is reduced promptly to  
writing and filed by the pharmacist.
4. On a written prescription order generated from electronic media containing the  
prescribing medical practitioner's electronic or manual signature. A prescription  
order that contains only an electronic signature must be applied to paper that uses  
security features that will ensure the prescription order is not subject to any form of  
copying or alteration.

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1 ORIGINAL of the foregoing, fully executed,  
2 filed this 25<sup>th</sup> day of January, 2006, with:

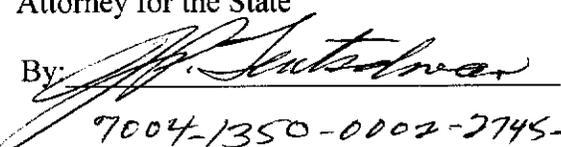
3 Arizona State Board of Pharmacy  
4 4425 W. Olive Avenue, #140  
5 Glendale, Arizona 85302

6 Fully Executed Copy of the foregoing sent  
7 via Certified US mail this 13<sup>th</sup> day of  
8 February, 2006 to:

9 JON ALESSI  
10 3516 S. Walapad Street  
11 Flagstaff, AZ 86001  
12 Respondent

13 Copy or the foregoing mailed  
14 this 13<sup>th</sup> day of February, 2006 to:

15 Roberto Pulver  
16 Assistant Attorney General  
17 1275 W. Washington, CIV/LES  
18 Phoenix, Arizona 85007  
19 Attorney for the State

20 By: 

21 7004-1350-0002-2745-3584  
22  
23  
24  
25  
26

EXHIBIT A

SAFeway, INC. 2750 SOUTH PRINCE STREET TEMPE AZ 85283		SECURITY LOSS PREVENTION PHOENIX, ARIZONA				
<b>EMPLOYEE INVESTIGATION</b>						
<b>CONTROLLED DOCUMENT - PRIVILEGED &amp; CONFIDENTIAL</b>						
FILENAME 05-0198	FAC OCC 2028-95	FACILITY TYPE Safeway	ADDRESS 1201 S. Plaza Wy Flagstaff AZ 86001			
DATE REPORTED 3/25/05	DATE/TIME OCC (DNFROM) 5/2/04	DATE/TIME OCC (AND/TO) 3/24/05	OUTSIDE AGENCY N/A	CASE # N/A	CCTV 0	
<b>SUBJECT INFORMATION</b>						
TYPE	NAME	TITLE / POSITION	ADDRESS / STORE	PHONE		
RP	Dele (Bus.)	5502	2028-95	(520) 779-3401		
RP	Crowley (Bus.)	2000	2028-95	(520) 779-3401		
<b>SUSPECTAL</b>						
NAME Alessi, John		CLASS 5504	FAC EMP 2028-95	EO 8157727	DN 5/2/04	LOCATION OCCURRED Pharmacy
DOB 1/2/81	RACE Oth	SEX M	TOTAL LOSS \$269.79	TOTAL RCVY \$0.00	NAMED RCVY \$0.00	NON-COMPANYPLOSSING RCVY \$0-/50
ADDRESS 3516 South Walapai St Flagstaff AZ 86001			PHONE (928) 853-6564	STATUS Termination		OTHER VIOLATION INFORMATION N/A
VIOLATION(S) / CLASSIFICATION(S) (1) Theft of Merchandise (2) Pharmacy Policy: Other (MC) (3) Pharmacy Policy: Dispensing by Non-Pharmacist						

**Summary:**

Store # 2028 Pharmacist Lessina Dele contacted security Investigator John Joy. Dele stated she observed Pharmacy Technician Alessi acting suspiciously with Vicodin. Dele contacted the store manager Joel Crowley. Crowley confronted Alessi regarding the Vicodin. Alessi admitted to taking Vicodin tablets for his own use. Estimated Loss to Safeway is 2400 tablets consisting of various doses of Vicodin tablets.

**Case Details:**

On March 24, 2005 store: #2029 Pharmacist Lessina Dele observed Pharmacy Technician John Alessi with a number of pills known to be Vicodin tablets spread out on the Pharmacy counter. Dele stated Alessi noticed her re-entering the Pharmacy and Alessi immediately covered the pills on the counter with a CD case. Dele walked out of view of Alessi and could hear Alessi sliding pills on the counter. Dele contacted the store manager Joel Crowley and notified him of her suspicions.

Crowley confronted Alessi in the pharmacy regarding the Vicodin tablets. Alessi admitted to Crowley that he had taken a few tablets because of a headache. Alessi stated this was the first time he had taken Vicodin from the pharmacy. It should be noted the Pharmacy has been experiencing shortages of Vicodin tablets during their inventories. Crowley took Alessi to the manager's office and had Alessi write a statement that Alessi admitted to taking the Vicodin tablets. Crowley did not retrieve the tablets from Alessi. Alessi admitted to leaving the office and going to the restroom and discarding the Vicodin tablets.

On March 28, 2005 Security Investigator John Joy interviewed Alessi at Store #2028. Present during the interview was Joel Crowley. During the course of the interview, Alessi admitted to Joy

SPECIALIST John Joy, Jr.	ID # 377	Page 1
REVIEWED BY: Nancy Jage	ID # 233	RELEASED TO / DATE

SANTWAY INC. 1750 SOUTH PRUITT DRIVE TAMPE AZ 85282		EMPLOYEE INVESTIGATION NARRATIVE	SECURITY LOSS PREVENTION PHOENIX DIVISION
FILENAME 05-0198	FAC# 2028-95		DATE REPORTED 3/25/05

that he had taken 7 or 8 Vicodin tablets for his own personal use. Alessi stated he had a headache and hoped these would cure the pain he was in. Alessi denied having taken and Vicodin from the pharmacy previously. Alessi denied ever supplying his friends or family with medications from the pharmacy. Alessi stated after talking with Crowley, he went immediately to the bathroom and flushed the 7 or 8 Vicodin tablets down the toilet. Alessi was asked to write a statement. Alessi was notified that he was being suspended pending further investigation.

Joy contacted the Regional Pharmacy Manager Kim Soricone. Soricone initiated an inventory on all classes of Vicodin. The following list is the result of the inventory.

On March 31, 2005 Soricone submitted the following information to Joy on missing Vicodin;

- |    |                            |             |               |                  |
|----|----------------------------|-------------|---------------|------------------|
| 1. | Hydrocodone/APAP 7.5/325mg | 7X100       | \$143.79      |                  |
| 2. | " " 10/500mg               | 4X100       | \$55.85       |                  |
| 3. | " " 7.5/750mg              | 5X100       | \$29.04       |                  |
| 4. | " " 7.5/500mg              | 7X100       | \$34.04       |                  |
| 5. | " " 5/500mg                | 1X100       | \$4.07        |                  |
| 6. | " " 5/500mg                | 7-8 taken = | \$3.00 retail | Total = \$269.79 |

On March 31, 2005 I reviewed the results of the investigation with the District Manager, Human Resources Advisor and the Security Manager. It was mutually decided that Alessi would be terminated for theft.

- Statements.
- RX Inventory results were secured
- Case closed

SPECIALIST	John Joy, Jr.	OF	377	Page
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I, Lessina Dele, hereby make the following statement to John Joy who has identified himself to me as a Safeway Store Security Investigator. I make this statement freely and voluntarily; no promises or threats have been made to induce me to give this statement.

I left the pharmacy for less than 1 minute + decided to come back into the pharmacy. I looked through the windows and saw Jon counting 40-50 pills of Vicodin. I opened the door and Jon quickly threw his CD case on top of the pills. I glanced around to see if he was filling a script but he wasn't. I was on the phone for 10-20 min w/ a Dr. and in that time frame he was still flipping through his case. I went to the back to put the RX bag away and I heard the pills being put into the CD case. Notified Crowley when Frank came in. Crowley reported Jon + Jon admitted to taking Vicodin in front of Frank to Soul Crowley.

*[Handwritten initials]*

I have read this statement consisting of 1 page(s). It is the truth to the best of my knowledge and recollection on 3/28/05

Witnesses:

*[Handwritten signature]*

*[Handwritten signature]*  
Signature

Today 3-24, I Jon Alessi decided to take a few Nicodin. I had a headache and I thought that it would help me feel better. I know that there was a problem with this in the past, but I had nothing to do with that. I'm truly sorry for this terrible decision.

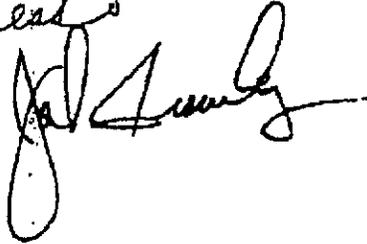
Jon Alessi  




EXHIBIT B



# REPORT OF THEFT OR LOSS OF CONTROLLED SUBSTANCES

Federal Regulations require registrants to submit a detailed report of any theft or loss of Controlled Substances to the Drug Enforcement Administration.

OMB APPROVAL  
No. 1117-0001

Complete the front and back of this form in triplicate. Forward the original and duplicate copies to the nearest DEA Office. Retain the triplicate copy for your records. Some states may also require a copy of this report.

1. Name and Address of Registrant (Include ZIP Code) Safeway #2028 1201 S. Plaza Way Flagstaff, AZ		ZIP CODE 86001	2. Phone No. (Include Area Code) 928-556-9170
---	--	-------------------	--

3. DEA Registration Number 2 lt. prefix: 85 7 digit suffix: 3394741	4. Date of Theft or Loss discovered March 24, 2005	5. Principal Business of Registrant (Check one) <input checked="" type="checkbox"/> Pharmacy <input type="checkbox"/> Practitioner <input type="checkbox"/> Manufacturer <input type="checkbox"/> Hospital/Clinic <input type="checkbox"/> Distributor <input type="checkbox"/> Methadone Program <input type="checkbox"/> Other (Specify)
---	--	---

6. County in which Registrant is located Coconino	7. Was Theft reported to Police? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	8. Name and Telephone Number of Police Department (Include Area Code) FLAGSTAFF POLICE DEPARTMENT FLAGSTAFF, ARIZONA
--	---	--

9. Number of Thefts or Losses Registrant has experienced in the past 24 months UNKNOWN	10. Type of Theft or Loss (Check one and complete items below as appropriate) <input type="checkbox"/> Night break-in <input type="checkbox"/> Armed robbery <input checked="" type="checkbox"/> Employee pilferage <input type="checkbox"/> Customer theft <input type="checkbox"/> Other (Explain) <input type="checkbox"/> Lost in transit (Complete Item 14)
---	--

11. If Armed Robbery, was anyone: Killed? <input type="checkbox"/> No <input type="checkbox"/> Yes (How many) _____ Injured? <input type="checkbox"/> No <input type="checkbox"/> Yes (How many) _____	12. Purchase value to registrant of Controlled Substances taken? \$ N/A	13. Were any pharmaceuticals or merchandise taken? <input type="checkbox"/> No <input type="checkbox"/> Yes (Est. Value) \$ N/A
--	--	---

14. IF LOST IN TRANSIT, COMPLETE THE FOLLOWING:		
A. Name of Common Carrier N/A	B. Name of Consignee N/A	C. Consignee's DEA Registration Number N/A
D. Was the carton received by the customer? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A	E. If received, did it appear to be tampered with? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A	F. Have you experienced losses in transit from this same carrier in the past? <input type="checkbox"/> No <input type="checkbox"/> Yes (How Many) N/A

15. What identifying marks, symbols, or price codes were on the labels of these containers that would assist in identifying the products?  
Stock Boxes with Melleson price stickers

16. If Official Controlled Substance Order Forms (DEA-222) were stolen, give numbers.  
N/A

17. What security measures have been taken to prevent future thefts or losses?  
 1) The technician has been suspended pending an investigation.  
 2) Reviewed Safeway policies and procedures with Rx staff.  
 3) Provided lockers up front for Rx tech's purposes - coats.  
 4) Reviewed security measures with Rx staff.

### PRIVACY ACT INFORMATION

**AUTHORITY:** Section 301 of the Controlled Substances Act of 1970 (PL 91-513).  
**PURPOSE:** Report theft or loss of Controlled Substances.  
**ROUTINE USES:** The Controlled Substances Act authorizes the production of special reports required for statistical and analytical purposes. Disclosures of information from this system are made to the following categories of users for the purposes stated:  
 A. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes.  
 B. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.  
**EFFECT:** Failure to report theft or loss of controlled substances may result in penalties under Section 402 and 403 of the Controlled Substances Act.

In accordance with the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1117-0001. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CONTINUE ON REVERSE

**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:

Jon Alessi  
3516 S. Walapad St.  
Flagstaff, AZ 86001

2. Article Number  
(Transfer from service label) *Handwritten: 050029-PHR Consent Agent*

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
*X Jon Alessi*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
*Jon Alessi* *1/22/06*

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

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3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7002 2030 0003 4785 7918

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

**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:

Jon Alessi  
3516 S. Walapad St.  
Flagstaff, AZ 86001

2. Article Number  
(Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
*X Jon Alessi*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
*Jon Alessi* *RECEIVED 2006*

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

**RECEIVED**  
FEB 27 2006  
ARIZONA STATE BOARD OF PHARMACY

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7004 1350 0002 2745 3584

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540