

JAN 31 2006

ARIZONA STATE BOARD OF PHARMACY

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of:

ROB HAHN, R.Ph.
Holder of License No. 10250
For the Practice of Pharmacy
In the State of Arizona,
Respondent

INVESTIGATION CASE NO. 05-33-PHR
CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION

A

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), ROB HAHN ("Respondent"), holder of Pharmacist License No. 10250 to practice pharmacy 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 Investigation Case No.
2 05-33-PHR involving allegations of unprofessional conduct against Respondent. The investigation into
3 these allegations against Respondent shall be concluded upon the Board's adoption of this Consent
4 Agreement.

5 6. Respondent understands that this Consent Agreement does not constitute a dismissal or
6 resolution of any other matters which may come before the Board in the future, if any, and does not
7 constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
8 other future investigations, actions or proceedings. Respondent also understands that acceptance of this
9 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. Respondent acknowledges and agrees that, upon signing this Consent Agreement and
13 returning this document to the Board's Executive Director, he may not revoke his acceptance of the
14 Consent Agreement or make any modifications to the document regardless of whether the Consent
15 Agreement has been signed by the Executive Director. Any modification to this original document is
16 ineffective and void unless mutually agreed by the parties in writing.

17 8. Respondent understands that the Consent Agreement shall not become effective unless and
18 until adopted by the Board and signed by its Executive Director.

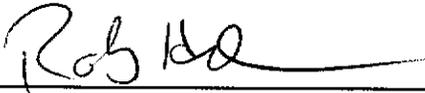
19 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
20 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

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

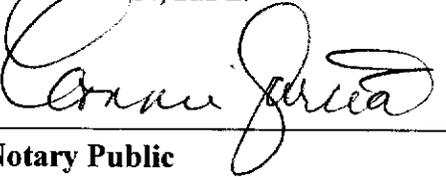
24 11. Respondent understands that this Consent Agreement is a public record that may be
25 publicly disseminated as a formal action of the Board and may be reported as required by law to
26 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

1 12. Respondent understands that any violation of this Consent Agreement constitutes
2 unprofessional conduct under A.R.S. § 32-1901.01 (B) (20) ([i]n this chapter, unless the context otherwise
3 requires, for the purposes of disciplining a pharmacist, pharmacy intern or graduate intern,
4 “unprofessional conduct” means the following, whether occurring in this state or elsewhere: violating a
5 formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board
6 or its executive director pursuant to this chapter), which shall result in disciplinary action under A.R.S. §
7 32-1927(A) (1).

8 **REVIEWED AND ACCEPTED BY**

9 
10 _____
11 **ROB HAHN, R.Ph.**

1-18-06
10 _____
11 **DATE**

11 
12 _____
13 **Notary Public**



14
15 **FINDINGS OF FACT**

16 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
17 matters described herein. Respondent neither admits nor denies the Findings of Fact, but acknowledges
18 the Board has sufficient evidence to allege them.

19 13. The Board is the duly constituted authority for the regulation and control of the practice
20 of pharmacy in the State of Arizona.

21 14. The Board possesses jurisdiction over the subject matter and over Respondent as a
22 licensee of the Board.

23 15. Respondent is the holder of a Pharmacy License No. 10250 which permits him to engage in
24 the practice of pharmacy in the State of Arizona.

1 16. From September 14, 2004 to September 3, 2005, Respondent was employed as a staff
2 pharmacist at Bashas' Inc. #7 located at 8035 E. Indian School Road in Scottsdale, Arizona.

3 17. From approximately October 2004 through August 2005, Respondent processed fictitious
4 prescription claims and prescription refills through the Bashas' pharmacy computer in order to submit
5 rebate requests to several pharmaceutical manufacturers and increase the apparent volume of pharmacy
6 business.

7 18. Respondent offered, delivered, received, or accepted unearned consideration while engaged in
8 the conduct described in paragraph 17, in violation of A.A.C. § R4-23-404.

9 19. Respondent did not maintain prescription records in the manner required by A.A.C. § R4-
10 23-407, while engaged in the conduct referenced in paragraph 17.

11 20. On or about August 31, 2005, Bashas' Loss Prevention questioned Respondent about the
12 fictitious claims. On or about September 1, 2005, Respondent was terminated from Bashas' Inc.

13 **CONCLUSIONS OF LAW**

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

16 22. The conduct and circumstance described in the above Findings of Fact constitute
17 unprofessional conduct and are grounds for disciplinary action under A.R.S. § 32-1927(A)(1)
18 to wit:

19 **A.R.S. § 32-1927 (A)(1):** A pharmacist, pharmacy intern or graduate intern is subject to
disciplinary action by the board for any of the following:

20 The Board determines that the licensee has committed an act of unprofessional conduct.

21 23. The conduct and circumstances described in the above Findings of Fact constitute
22 unprofessional conduct and are violations of A.R.S. § 32-1901.01 (B)(2), -1901.01(B)(19),-
23 1901.01(B)(24), -1901.01(B)(26), -1901.01(B)(27), A.A.C. § R4-23-404(C), and A.A.C. § R4-23-
24 404(D)(1) to-wit:

25 **A.R.S. § 32-1901.01(B)(2):** In this chapter, unless the context otherwise requires, for the purposes
26 of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional conduct" means
the following, whether occurring in this state or else where:

1 Violating any federal or state law, rule or regulation relating to the manufacture or distribution of
2 drugs and devices or the practice of pharmacy.

3 **A.R.S. § 32-1901.01(B)(19):** In this chapter, unless the context otherwise requires, for the
4 purposes of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional
5 conduct" means the following, whether occurring in this state or else where:

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

8 **A.R.S. § 32-1901.01(B)(24):** In this chapter, unless the context otherwise requires, for the
9 purposes of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional
10 conduct" means the following, whether occurring in this state or else where:

11 Paying rebates or entering into an agreement for the payment of rebates to a medical practitioner
12 or any other person in the health care field.

13 **A.R.S. § 32-1901.01(B)(26):** In this chapter, unless the context otherwise requires, for the
14 purposes of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional
15 conduct" means the following, whether occurring in this state or else where:

16 Fraudulently claiming to have performed a professional service.

17 **A.R.S. § 32-1901.01(B)(27):** In this chapter, unless the context otherwise requires, for the
18 purposes of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional
19 conduct" means the following, whether occurring in this state or else where:

20 Fraudulently charging a fee for a professional service.

21 **A.A.C. § R4-23-404(C):** Fraudulent claim for service. A pharmacist or pharmacy permittee shall
22 not claim the performance of a service that the pharmacist or pharmacy permittee knows or should
23 know was not performed, such as, claiming to dispense a prescription medication that is not
24 dispensed.

25 **A.A.C. § R4-23-404(D)(1):** Fraudulent claim for a fee. A pharmacist or pharmacy permittee:

- 26 1. Shall not claim a fee for a service that is not performed or earned;

ORDER

Based upon the above Findings of Fact and Conclusions of Law, and under the authority
granted to the Board, under A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-122(C),

IT IS HEREBY ORDERED that:

24 24. (a) Pharmacy License No. 10250, which was issued to Respondent for the practice of
25 pharmacy in the State of Arizona, is hereby placed on **SUSPENSION** for a period of sixty (60) days
26 beginning on the effective date of this Order.

1 (b) Thereafter, Respondent's license shall be placed on **PROBATION** for a period of two
2 (2) years, from the final date of **SUSPENSION**.

3 The **SUSPENSION** and **PROBATION** are subject to the following conditions:

4 25. Respondent is required to furnish all pharmacy employers with a copy of this Board Order
5 throughout the term of his probation.

6 26. Respondent shall not serve as a preceptor pharmacist or pharmacist-in-charge throughout
7 the term of his suspension and probation.

8 27. Respondent is required to advise the Board immediately of any change in pharmacy
9 employment status throughout the term of his probation.

10 28. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or
11 has maintained licensure in the profession of pharmacy along with the registration number of said
12 licenses.

13 29. Respondent shall complete two hundred (200) hours of community service approved by the
14 Board staff before the termination of the probation period.

15 30. Respondent shall take the Multistate Pharmacy Jurisprudence Examination and obtain a
16 passing score of eighty percent (80%) or better to pass the examination, within one hundred and twenty
17 (120) days from the effective date of this Order. If Respondent fails the examination, he can retake the
18 examination one more time; however, the retaking of the examination shall occur within one year from the
19 effective date of this Order.

20 31. Respondent shall pay all fees and complete all continuing education requirements
21 throughout the term of his suspension and probation to maintain Pharmacy License No. 10250.

22 32. Respondent shall obey all federal and state laws and rules governing the practice of
23 pharmacy.

24 33. Respondent shall appear in person before the Board to respond to questions or concerns
25 regarding his compliance with this Order when requested by the Board.

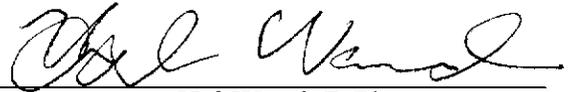
26 34. If Respondent violates this Order in any way or fails to fulfill the requirements of this

1 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend
2 or take other disciplinary actions against the Respondent. The issue at such a hearing will be
3 limited solely to whether this Order has been violated.

4 35. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
5 after January 26, 2008 to request that the probation imposed by this Order be terminated. Respondent's
6 failure to petition the Board to terminate the probation shall extend the probation period.

7 **DATED and EFFECTIVE this 25th day of January, 2006**

8 **ARIZONA STATE BOARD OF PHARMACY**

9 

10 Hal Wand, R.Ph.
11 Executive Director
12 Arizona State Board of Pharmacy

13 ORIGINAL of the foregoing, fully executed,
14 filed this 25th day of January 2006, with:

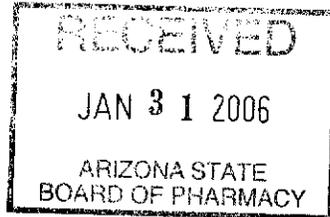
15 Arizona State Board of Pharmacy
16 4425 W. Olive Avenue, #140
Glendale, Arizona 85302

17 Copy of the foregoing sent st
18 via Certified US mail this 31 day of
January, 2006 to:

19 ROB HAHN, R.Ph.
20 15837 E. Palomino Blvd.
Fountain Hills, AZ 85268

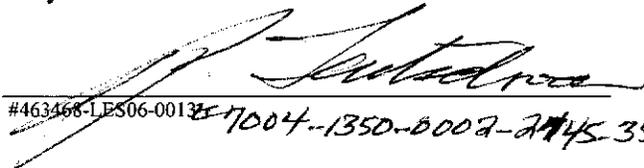
21 Roger N. Morris, Esq.
22 Quarles & Brady Streich Lang
23 Two N. Central
Phoenix, AZ 85004
24 Attorney for Respondent
25
26

Copy or the foregoing mailed
this day of January, 2006 to:



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Roberto Pulver
Assistant Attorney General
1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

By: 
#463468-LES06-0013 7004-1350-0002-2145-3553



ARIZONA STATE BOARD OF PHARMACY

PO Box 6389, GLENDALE, ARIZONA 85312-6389
4425 WEST OLIVE AVENUE, SUITE 140, GLENDALE, ARIZONA 85302-3844
623-463-ASBP (2727) FAX 623-934-0583
www.pharmacy.state.az.us

Compliance Officer's Summary

Bashas' United Drug # 7

November 9, 2005

In August, 2005 Bashas' United Drug provided notice to the Board of an investigation conducted into the submission of various prescription medications for manufacturer rebates. Mr. Rob Hahn, license # 10250, Pharmacist-in-charge at Bashas' United Drug # 7, was one of two pharmacists identified in Bashas' internal investigation. The following is a summary of the controlled substance and prescription record audit conducted as a result of the notification to the Board. A separate report has been submitted for Michelle Mai, license # 12319, Pharmacist-in-charge at Bashas' United Drug # 19.

Controlled Substance Audit

On November 4, 2005 I conducted a controlled substance audit of Bashas' United Drug # 7 located at 8035 E. Indian School Rd. Scottsdale, AZ 85251. I met with Richard Bloom Pharmacist-in-charge, license # 14106, and reviewed the Notice of Inspection Rights. A total of eleven drugs were audited: two CII drugs chosen at random from a review of the purchase records, and the same nine CIII and CIV drugs audited during the Bashas' United Drug # 19 audit.

- The audit was conducted from the October 19, 2004 opening inventory to the September 12, 2005 inventory completed by Mr. Bloom as the new Pharmacist-in-charge. Copies of the inventory records were obtained, and invoices for each drug for the audit period were documented. A DEA audit log was printed for each drug. No returns were found for these drugs for this time period. The opening inventory from October 19, 2004 did not include a count for the Carisoprodol, invoices indicate an opening count of 200 should have been recorded.
- Initial results indicated an overage on two drugs: Ambien 10mg and Hydrocodone/APAP 10/325. A search of all invoices both controlled and non-controlled did not uncover any additional information. In order to reconcile the two overages, a request was placed with both Bashas' wholesalers (Cardinal and Anda) to provide purchase reports.
- The final audit showed the following:

Morphine ER 15mg	No discrepancy	
OxyContin 40mg	No discrepancy	
APAP #3	No discrepancy	
Ambien 10mg	Short 1 tablet	(-0.1%)
Carisoprodol 350mg	Short 22 tablets	(-0.3%)
Hydrocodone/APAP 10/325	Short 13 tablets	(-0.6%)
Meridia 5mg	No purchases/sales	
Phentermine 15mg	No purchases/sales	
Phentermine 37.5mg	No purchases/sales	
Triazolam 0.25mg	No discrepancy	
Tussionex	No discrepancy	

Prescription Record Audit

On October 31, 2005 I requested Mr. Brad Barron, Bashas' Pharmacy System Coordinator, run a controlled substance report. The report was to include the two physicians (Mai and Nguyen) and eight patients identified in the Bashas' United Drug # 19 audit. Mr. Barron found no controlled substance transactions using these parameters at Bashas' United Drug # 7. During the audit on November 4, 2005 I searched the database for patients with the last name of Ha, Hahn, Cao, Mai, Vo, and Vochler (patients from store # 19's list). The search located entries for the last name of Hahn only. A summary sheet of the following information is attached.

- For Rob Hahn Pharmacist, the prescription profile had two entries for SMZ/TMP DS and Carisoprodol. Telephone prescriptions were found for both medications, the Carisoprodol was placed on hold and never filled. The physician of record is Dr. Paul Dlugie, Scottsdale, AZ. The agent was documented on both prescriptions.
- For Brandon Hahn, the prescription profile had an entry for Methylprednisolone with an original and dispense date of November 10, 2004. A telephone prescription was located, the physician of record is Dr. Vickie Mai, Garden Grove, CA. No specific agent was documented on the prescription, RH is recorded as the receiving pharmacist.
- For Curtis Hahn, the prescription profile had nine entries, the physician of record is Dr. Steven Mattson, Minot, ND. A faxed prescription was found for the Synthroid 100mcg, the medication was profiled and never filled. A telephone prescription was found for the One Touch Ultra strips and lancets. Reassign prescriptions were located for Lipitor 20mg, Synthroid 75mcg, Glucotrol XL 5mg, Digitek 250mcg, Toprol XL 50mg, and Vasotec 5mg. All of the reassign prescriptions have an original date of November 19, 2004. No agent was documented on any of the reassign/telephone prescriptions, RH is recorded as the receiving pharmacist.
- For Betty Hahn, the prescription profile had nine entries, the physicians of record are Dr. Mai and Dr. Mattson. Of the five prescriptions indicating Dr. Mai as the prescriber, three are telephone prescriptions and two are reassigns. No agent was documented on any of the prescriptions, RH is recorded as the receiving pharmacist. Of the four prescriptions indicating Dr. Mattson as the prescriber, two are telephone prescriptions and two are reassigns. Two out of the four prescriptions have an agent documented, RH is recorded as the receiving pharmacist.
- In addition to a patient search, I printed all prescription entries for Imitrex 25mg and Imitrex 50mg. This was done in response to the report received from Bashas' United Drug indicating Mr. Hahn had run Imitrex prescriptions through the pharmacy computer system to increase business. I reviewed all prescription fills with Mr. Hahn's initials (RH), a total of three patients were found. An original prescription was located in the files for patient James Duncan. The hard copy prescription for Jenell Little, prescription # 6001835 could not be located. Two prescriptions were located for Betty Hahn, see summary from above entry.
- As an additional check, I completed a prescription audit of the hard copy files for the following prescriptions: 2000900-2000999; 4001200-4001299; 6003600-6003699; and 6003700-6003799. All of the controlled prescriptions (2000900-2000999, and 4001200-4001299) were complete, in numerical order with no numbers missing, and filled within the appropriate date limits. Of the non-controlled prescriptions, the following numbers were missing from the files: 6003653-6003656, 6003786, and 6003782. A review of the computer database showed the prescriptions were listed as filled in error, and were sent to the dummy file. The only prescription number recorded on the daily audit log is 6003782, at some point after the end of day report was generated, it appears the prescription was backed out and sent to the dummy file. The other prescription numbers were backed out prior to the end of day report being run.

Compliance Officer's Summary

- The controlled substance inventory audit does not indicate a significant discrepancy in any of the eleven medications audited. Carisoprodol, a schedule IV controlled substance in Arizona, was not recorded as part of the opening inventory of October 19, 2004. Purchase records indicate 200 tablets were received on October 14, 2004.
- Computer records show prescription # 6001835 for Imitrex was filled on four occasions by Pharmacist RH. No hard copy prescription was located in the prescription files.
- A review of the computer database indicated several prescriptions filled for pharmacist RH and family members. All telephone/reassign prescriptions except for one recorded RH as the receiving pharmacist. No agent was recorded on 16/20 of the prescriptions.
- **Violation ARS 36-2515 (A)(5)(a)**The following controlled substances are, unless specifically excepted, included in schedule IV: (5)(a) Any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts: (a) Carisoprodol.
- **Violation ARS 32-1964 (A)**Every proprietor, manager, or pharmacist in charge of a pharmacy shall keep in the pharmacy a book or file in which that person places the original of every prescription order of drugs, devices or replacement soft contact lenses that are compounded or dispensed at the pharmacy. This information shall be serially numbered, dated and filed in the order in which the drugs, devices or replacement soft contact lenses were compounded or dispensed. A prescription order shall be kept for at least seven years. The proprietor, manager or pharmacist shall produce this book or file in court or before any grand jury on lawful order. The book or file of original prescription orders is open for inspection at all times by the prescribing medical practitioner, the board and its agents and officers of the law in performance of their duties.
- **Violation R4-23-402(A)(2)(13)(c)**A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order: (2) Obtain, and record the name of an individual who communicates an oral prescription order; (13)(c) Obtain, or assume responsibility to obtain, permission to refill a prescription order, and record, or assume responsibility to record on the original prescription order: (c) name of the medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order.

Sandra Sutcliffe
Compliance Officer

<u>Patient</u>	<u>Rx number</u>	<u>Rx type</u>	<u>Drug</u>	<u>Agent recorded</u>	<u>Prescriber</u>	<u>RPh</u>
Rob Hahn	6001090	Telephone	SMZ/TMP DS	yes	Dlugie	RH
Rob Hahn	4000730	Telephone	Carisoprodol	yes	Dlugie	RB
Brandon Hahn	6001099	Telephone	Medrol 4mg	no	Mai	RH
Curtis Hahn	6001685	Fax	Synthroid 100mcg	yes	Mattson	RH
Curtis Hahn	6001270	Reassign	Synthroid 75mcg	no	Mattson	RH
Curtis Hahn	6001269	Reassign	Lipitor 20mg	no	Mattson	RH
Curtis Hahn	6001268	Reassign	Digitek 250mcg	no	Mattson	RH
Curtis Hahn	6001267	Reassign	Glipizide 5mg	no	Mattson	RH
Curtis Hahn	6001266	Reassign	Enalapril 5mg	no	Mattson	RH
Curtis Hahn	6001265	Reassign	Toprol XL 50mg	no	Mattson	RH
Curtis Hahn	6001095	Telephone	One Touch	no	Mattson	RH
Curtis Hahn	6001094	Telephone	One Touch	no	Mattson	RH
Betty Hahn	6002196	Telephone	Imitrex 25mg	yes	Mattson	RH
Betty Hahn	6001761	Reassign	Penlac 8%	no	Mai	RH
Betty Hahn	6001760	Reassign	Urea 40%	no	Mai	RH
Betty Hahn	6001418	Reassign	Imitrex 50mg	no	Mattson	RH
Betty Hahn	6001100	Telephone	Famotidine 40mg	no	Mai	RH
Betty Hahn	6001098	Telephone	Bextra 20mg	no	Mai	RH
Betty Hahn	6001097	Telephone	Tri-Luma	no	Mai	RH
Betty Hahn	6001096	Telephone	Zyrtec 10mg	no	Mattson	RH
Betty Hahn	6001035	telephone	Estraderm0.05	yes	Mattson	RH

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:

Rob Hahn, R.Ph.
 15837 E. Palomino Blvd.
 Fountain Hills, AZ 85268

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Rob Hahn 2/2/06

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. Article Number
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