

## NOTICE OF VIOLATION

California Safe Drinking Water  
and Toxic Enforcement Act -  
Proposition 65

**ACCUMED, INC.**

**May 6, 2003**

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health. The Center for Environmental Health is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices.

### Description of Violation:

- The name and address of the violator is: Accumed, Inc., 2572 Brunswick Pike, Lawrenceville, NJ 08648.
- The violations have been occurring since approximately July 2001 and are continuing to this day.
- This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- The names of the listed chemicals involved in these violations are **lead, lead compounds, cadmium and cadmium compounds** (the "Listed Chemicals"). Exposures to the Listed Chemicals occur from the use of the products identified in this notice.
- The route of exposure for the violations covered by this notice is ingestion.
- The category of products causing these violations is **anti-diarrheal medicines containing attapulgit as an active ingredient**. These products are designed to relieve diarrhea and cramps. Specific examples of these products include "**Walgreens Concentrated Anti-Diarrheal**" and "**Ka-Pec.**" The Listed Chemicals are contained in this product.
- These exposures occur in homes, workplaces and everywhere throughout California where these anti-diarrheal medicines are used.
- No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of the Listed Chemicals.

Please direct any inquiries regarding this notice to counsel for the Center for Environmental Health: Mark N. Todzo, Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111.

## CERTIFICATE OF MERIT

### **Health & Safety Code §25249.7(d)**

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached Sixty-Day Notice of Violation in which it is alleged that the parties identified in such Notice have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings regarding the reproductive toxicity and carcinogenicity of the lead and lead compounds and cadmium and cadmium compounds contained in the over-the-counter anti-diarrheal medicines with attapulgitte as the active ingredient manufactured and/or sold by such parties.
2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health (“CEH”).
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemicals that are the subject of the attached Notice.
4. Based on the information obtained through the consultations referenced above, and on all other information in my possession, I believe that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in the attached Notice. I understand that “reasonable and meritorious case” means that the information provides a credible basis that all elements of the CEH’s case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of the Certificate of Merit served on the Attorney general attaches to it

factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e. (1) the identity of the person(s) with whom I and/or members of my firm consulted; and (2) the facts, studies or other data reviewed by those persons.

Dated: May 6, 2003

## SERVICE LIST

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\*Margaret Carew Toledo, Esq.  
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400 Capitol Mall, Suite 3000  
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Attorneys for Accumed, Inc.

## **PROOF OF SERVICE BY MAIL**

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, California 94122.

On May 6, 2003, I served a copy of the documents listed immediately hereafter by first class mail by placing the same in an envelope, sealing, fully preparing postage thereon, and depositing said envelope in the U.S. Mail at San Francisco, California. Said envelope was addressed as follows:

See attached service list (sent via certified mail with applicable postage to those listed with asterisks).

Documents mailed:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;**

**INFORMATION SUPPORTING CERTIFICATE OF MERIT** (Official Information pursuant to Evidence Code §1040, sent only to the Attorney General); and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisks).

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 6, 2003, at San Francisco, California.