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

In the Matter of the Accusation Against:

ANDREW L. WILSON
918 Third Street, #D
Santa Cruz, California 95060

Pharmacist License No. RPH 45634

Respondent.

Case No. 2474

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 26, 2002, Complainant Patricia F. Harris, in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, filed Accusation No. 2474 against Andrew L. Wilson ("Respondent") before the Board of Pharmacy ("Board").

2. On or about August 21, 1992, the Board of Pharmacy issued Pharmacist License No. RPH 45634 to Respondent. The Pharmacist license expired on January 31, 2002, and has not been renewed.

3. On or about March 11, 2002, Patricia Renteria, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2474, 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 918 Third Street #D, Santa Cruz, California 95060. A copy of the Accusation, the related documents, and Declaration of Service are attached hereto 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).

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1 5. On or about March 15, 2002, the aforementioned documents were returned
2 by the U.S. Postal Service and a forwarding address was provided. A copy of the postal returned
3 documents are attached hereto as "Exhibit B," and are incorporated herein by reference.

4 6. On or about March 19, 2002, Patricia Renteria, an employee of the
5 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
6 2474, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
7 Code sections 11507.5, 11507.6, and 11507.7 to Respondent at the forwarding address of 3304
8 Quail Run Road, El Reno, Oklahoma, 73036. A copy of the Declaration of Service is attached
9 hereto as "Exhibit C", and is incorporated herein by reference.

10 7. Business and Professions Code section 118(b) states, in pertinent part, that
11 the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of
12 jurisdiction to proceed with a disciplinary action during the period within which the license may
13 be renewed, restored, reissued or reinstated.

14 8 Government Code section 11506 states, in pertinent part:

15 ...

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

20 ...

21 9. Respondent failed to file a Notice of Defense within 15 days after service
22 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
23 Accusation No. 2474.

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

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

28 ...

1 and deceit);

2 e. Respondent has committed acts constituting grounds for
3 disciplinary action under Code section 4301(j) and/or (o), in that he violated Code section 4060
4 and Health and Safety Code section 11350(a) (unprofessional conduct for possession of
5 controlled substances, to wit, Percocet, Endocet, Hydrocodone, Hydromorphone, and MS
6 Contin);

7 f. Respondent has committed acts constituting grounds for
8 disciplinary action under Code section 4301(j) and/or (o), in that he violated section 4060 and
9 Health and Safety Code section 11377(a)(4) (unprofessional conduct for possession of controlled
10 substances, to wit, Adderall, Dexedrine, and Dextrostat);

11 g. Respondent has committed acts constituting grounds for
12 disciplinary action under Code section 4301(j) and/or (o), in that he violated Code section 4327
13 (unprofessional conduct for dispensing or compounding a drug while under the influence of a
14 dangerous drug, to wit, Dexedrine)

15 h. Respondent has committed acts constituting grounds for
16 disciplinary action under Code section 4301(l) (unprofessional conduct for conviction of a crime
17 which is substantially related to the qualifications, functions or duties of a licensed pharmacist).

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ORDER

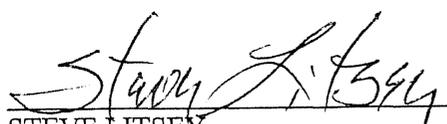
IT IS SO ORDERED that Pharmacist License No. RPH 45634, heretofore issued to Respondent Andrew L. Wilson, is revoked.

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 July 4, 2002.

It is so ORDERED June 4, 2002

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: 
STEVE LITSEY
Board President

1 BILL LOCKYER, Attorney,
of the State of California
2 REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2474

11 ANDREW L. WILSON
12 918 Third Street #D
Santa Cruz, California 95060

A C C U S A T I O N

13 Pharmacist License No. RPH 45634

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

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

21 2. On or about August 21, 1992, the Board of Pharmacy ("Board") issued
22 Pharmacist License Number RPH 45634 to Andrew L. Wilson ("Respondent"). Respondent's
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on January 31, 2002, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board, under the authority of the
27 following sections of the Business and Professions Code ("Code").
28

1 4. Section 118(b) of the Code states, in relevant part, that the suspension,
2 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
3 proceed with a disciplinary action during the period within which the license may be renewed,
4 restored, reissued or reinstated.

5 5. Section 4402(a) of the Code states that any pharmacist license that is not
6 renewed within three years following its expiration may not be renewed, restored, or reinstated
7 and shall be canceled by operation of law at the end of the three-year period.

8 6. Section 4300(a) of the Code states that every license issued may be
9 suspended or revoked.

10 7. Section 4301 of the Code states, in relevant part, that the Board shall take
11 action against any holder of a license who is guilty of unprofessional conduct or whose license
12 has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct
13 shall include, but is not limited to, any of the following:

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

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

19 (l) The conviction of a crime substantially related to the qualifications, functions,
20 and duties of a licensee under Chapter 9 (commencing with Section 4000) of the Business and
21 Professions Code. The record of conviction of a violation of Chapter 13 (commencing with
22 Section 801) of Title 21 of the United States Code regulating controlled substances or of a
23 violation of the statutes of this state regulating controlled substances or dangerous drugs shall be
24 conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall
25 be conclusive evidence only of the fact that the conviction occurred. The board may inquire into
26 the circumstances surrounding the commission of the crime, in order to fix the degree of
27 discipline or, in the case of a conviction not involving controlled substances or dangerous drugs,
28 to determine if the conviction is of an offense substantially related to the qualifications,

1 functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of the
2 Business and Professions Code. A plea or verdict of guilty or a conviction following a plea of
3 nolo contendere is deemed to be a conviction within the meaning of this provision. The board
4 may take action when the time for appeal has elapsed, or the judgment of conviction has been
5 affirmed on appeal or when an order granting probation is made suspending the imposition of
6 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the
7 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
8 verdict of guilty, or dismissing the accusation, information, or indictment.

9 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
10 abetting the violation of or conspiring to violate any provision or term of Chapter 9 (commencing
11 with Section 4000) of the Business and Professions Code or of the applicable federal and state
12 laws and regulations governing pharmacy, including regulations established by the board.

13 8. Section 490 of the Code states that a board may suspend or revoke a
14 license on the ground that the licensee has been convicted of a crime, if the crime is substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued. A conviction within the meaning of this section means a plea or verdict of
17 guilty or a conviction following a plea of nolo contendere. Any action which a board is
18 permitted to take following the establishment of a conviction may be taken when the time for
19 appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
20 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
21 order under the provisions of Section 1203.4 of the Penal Code.

22 9. Section 4059 of the Code states, in relevant part, that no person shall
23 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
24 optometrist, or veterinarian.

25 10. Section 4060 of the Code states, in relevant part, that no person shall
26 possess any controlled substance, except that furnished to a person upon the prescription of a
27 physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a
28 physician assistant pursuant to Section 3502.1 or a nurse practitioner pursuant to Section 2836.1.

1 11. Section 4327 of the Code states that any person who, while on duty, sells,
2 dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic
3 beverages shall be guilty of a misdemeanor.

4 12. Section 11170 of the Health and Safety Code states that no person shall
5 prescribe, administer, or furnish a controlled substance for himself.

6 13. Section 11173(a)(1) of the Health and Safety Code states, in relevant part,
7 that no person shall obtain or attempt to obtain controlled substances by fraud, deceit,
8 misrepresentation or subterfuge.

9 14. Section 11350(a) of the Health and Safety Code states, in relevant part,
10 that every person who possesses (1) any controlled substance specified in subdivision (b) or (c)
11 of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a
12 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
13 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
14 prison.

15 15. Section 11377(a)(4) of the Health and Safety Code states, in relevant part,
16 that every person who possesses any controlled substance which is specified in subdivision (d),
17 (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
18 veterinarian, licensed to practice in the state, shall be punished by imprisonment in a county jail
19 for a period of not more than one year or in the state prison.

20 16. DRUGS

21 **"Adderall"** (dextroamphetamine sulfate, dextroamphetamine saccharate,
22 amphetamine aspartate, amphetamine sulfate), a stimulant, is a Schedule II controlled substance
23 as defined in Health and Safety Code section 11055 (d) and a dangerous drug as defined by Code
24 section 4022.

25 **"Dexedrine"** (dextroamphetamine sulfate), a stimulant, is a Schedule II
26 controlled substance as defined in Health and Safety Code section 11055 (d) and a dangerous
27 drug as defined by Code section 4022.

28 **"Dextrostat"** (dextroamphetamine sulfate), a stimulant, is a Schedule II

1 controlled substance as defined in Health and Safety Code section 11055 (d) and a dangerous
2 drug as defined by Code section 4022.

3 **"Percocet" and "Endocet"** (oxycodone and acetaminophen), narcotic drugs, are
4 Schedule II controlled substances as defined in Health and Safety Code section 11055 (b) (1) (N)
5 and a dangerous drug as defined by Code section 4022.

6 **"Hydrocodone,"** a narcotic drug compound, is a Schedule III controlled
7 substance as defined in Health and Safety Code section 11056 (e) and a dangerous drug as
8 defined by Code section 4022.

9 **"Hydromorphone,"** an opium derivative, is a Schedule II controlled substance as
10 defined in Health and Safety Code section 11055 (b) (1) (K) and a dangerous drug as defined by
11 Code section 4022.

12 **"MS Contin"** (morphine), an opium derivative, is a Schedule II controlled
13 substance as defined in Health and Safety Code section 11055 (b) (1) (M) and a dangerous drug
14 as defined by Code section 4022.

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

19 FACTUAL BACKGROUND

20 18. On or about November 22, 2000, the Board received a Report of Theft or
21 Loss of Controlled Substances from Longs Drugs Pharmacy ("LDP") 197 and 504. LDP 197
22 alleged that Respondent pilfered Adderall, Dexedrine, Hydromorphone, and MS Contin. LDP
23 504 alleged that Respondent pilfered Adderall, Dextrostat, MS Contin, Dexedrine, Endocet,
24 Percocet, and Hydrocodone.

25 a. On or about July 28, 2000, LDP's Loss Prevention personnel
26 installed a surveillance camera at LDP 504 and took an inventory. A videotape revealed that, on
27 July 29, 2000, respondent entered LDP 504 before the pharmacy opened and removed a bottle of
28 Dexedrine (15 mg. Spansules). Shortly thereafter, Respondent ingested 4-5 tablets of the

1 Health and Safety Code. Respondent possessed controlled substances, to wit, Adderall,
2 Dexedrine and Dextrostat, as set forth in paragraphs 18, 18a, 18b, and 18c, above.

3 SEVENTH CAUSE OF ACTION

4 (Unprofessional Conduct - Operation under Influence of Drugs)

5 25. Respondent is subject to disciplinary action under section 4301(j) and/or
6 4301(o) of the Code, in that he violated section 4327 of the Code. Respondent, while on duty,
7 sold, dispensed or compounded a drug while under the influence of a dangerous drug, to wit,
8 Dexedrine, as set forth in paragraph 18a, above.

9 EIGHTH CAUSE OF ACTION

10 (Unprofessional Conduct - Conviction of a Crime)

11 26. Respondent is subject to disciplinary action under sections 490 and/or
12 4301(l) of the Code in that respondent was convicted of a crime which is substantially related to
13 the qualifications, functions or duties of a licensed pharmacist, as set forth in paragraph 18c,
14 above.

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1 PRAYER

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

4 1. Revoking or suspending Pharmacist License Number RPH 45634, issued
5 to Andrew L. Wilson;

6 2. Ordering Andrew L. Wilson to pay the Board of Pharmacy the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

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

10 DATED: 2/26/02

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13 _____
14 PATRICIA F. HARRIS
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

17 03583110-SF2001AD1417
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