

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2591

12 CHRISTIAN W. EMDE, RPH
4468 Mississippi Street #5
13 San Diego, CA 92116

OAH No.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Original Pharmacist License No. RPH 45514

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
21 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
22 by Bill Lockyer, Attorney General of the State of California, by Sherry Ledakis, Deputy
23 Attorney General.

24 2. Christian W. Emde, RPH (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 14, 1992, the Board of Pharmacy issued Original
27 Pharmacist License No. RPH 45514 to Christian W. Emde, RPH. The license was in full force

28 ///

1 and effect at all times relevant to the charges brought in Accusation No. 2591 and will expire on
2 May 31, 2004, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2591 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on December
7 20, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2591 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and
11 allegations in Accusation No. 2591. Respondent also has carefully read, and understands the
12 effects of this Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent agrees that if all of the allegations contained in Accusation
24 No. 2591, were proven at a hearing it would constitute cause for disciplinary action and hereby
25 surrenders his Original Pharmacist License No. RPH 45514 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the
27 Board to issue its order accepting the surrender of his Original Pharmacist License without
28 further process.

1 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
2 be bound by the Decision and Order of the Board of Pharmacy.

3 DATED: 12/20/02

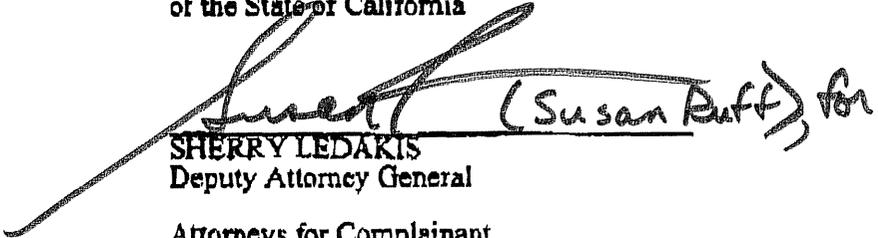
4
5 
6 CHRISTIAN W. EMDE, RPH
7 Respondent

8
9 ENDORSEMENT

10 The foregoing Stipulated Surrender of License and Order is hereby respectfully
11 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

12
13 DATED: 12/24/02

14
15 BILL LOCKYER, Attorney General
16 of the State of California

17 
18 SHERRY LEDAKIS (Susan Ruff), for
19 Deputy Attorney General
20 Attorneys for Complainant

21 DOJ Docket Number: 03583110-9132003A1D0918

22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

CHRISTIAN W. EMDE, RPH
4468 Mississippi Street #5
San Diego, CA 92116

Original Pharmacist License No. RPH 45514

Respondent.

Case No. 2591

OAH No.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 5, 2003.

It is so ORDERED February 3, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2078
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2591

13 CHRISTIAN W. EMDE, RPH
4468 Mississippi Street #5
14 San Diego, CA 92116

A C C U S A T I O N

15 Original Pharmacist License No. RPH 45514

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 14, 1992, the Board of Pharmacy issued Original
24 Pharmacist License Number RPH 45514 to Christian W. Emde, RPH (Respondent). The
25 Original Pharmacist License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on May 31, 2004, unless renewed.

27 ///

28 ///

1 C. Business and Professions Code section 4370 provides:

2 (a) The employee assistance program shall inform, in writing, each
3 pharmacist who voluntarily participates in the diversion program without referral by the
4 board of the procedures followed in the program, of the rights and responsibilities of the
5 pharmacist in the program, and of the possible consequences of noncompliance with the
6 program.

7 (b) The board shall be informed of the pharmacist's noncompliance with
8 the treatment program if the employee assistance program determines that the pharmacist
9 resuming the practice of pharmacy would pose a threat to the health and safety of the
10 public. The board shall be informed of the basis for the pharmacist's termination and of
11 the determination that the pharmacist's resuming the practice of pharmacy would pose a
12 threat to the health and safety of the public.

13 (c) Participation in a program under this article shall not be a defense to
14 any disciplinary action that may be taken by the board. Further, no provision of this
15 article shall preclude the board from commencing disciplinary action against a licensee
16 who is terminated from a program under this article.

17 D. Health and Safety Code Section 11170 provides:

18 No person shall prescribe, administer, or furnish a controlled substance for
19 himself.

20 E. Health and Safety Code section 11173(a) provides:

21 No person shall obtain or attempt to obtain controlled substances, or
22 procure or attempt to procure the administration of or a prescription for controlled
23 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
24 concealment of a material fact.

25 4. Section 125.3 of the Code provides, in pertinent part, that the Board may
26 request the administrative law judge to direct a licensee found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit or Corruption)

29 5. Respondent is subject to disciplinary action under section 4301(f) in that
30 he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the
31 acts were committed in the course of relations as a licensee or otherwise, and whether the acts
32 were a felony or misdemeanor or not. The circumstances are as follows:

33 A. On or about August 15, 2000, the Board received a telephone call and fax
34 from T.W., M.F.T. and Case Manager for Managed Health Network, Inc. (The Pharmacy's

1 Board's Diversion Program). In the fax, T.W. stated respondent, a former diversion participant,
2 had relapsed and refused to comply with the Pharmacist's Recovery Program. T.W. expressed
3 concern that if allowed to practice as a pharmacist respondent would present a risk to the public.

4 B. On August 16, 2000, Inspector J.C., Pharm D, and Inspector M.
5 (Inspectors for the Board) were conducting an inspection of Park Boulevard Pharmacy in San
6 Diego. During the inspection, it was noted that respondent's name appeared on a list of
7 employees. The Inspectors asked to speak to respondent. They were told by the Pharmacy
8 Manager, J.G. that respondent had not worked at the pharmacy since June 30, 2000. Moreover,
9 he told them that respondent had asked him if he could have July 3, 2000, off from work. J.G.
10 agreed. Respondent was to return to work on July 5, 2000, however, respondent never appeared
11 for work on July 5th. Respondent called the pharmacy and told J.G. that he was having difficulty
12 adjusting to medications and would call back, but neither J.G. or the Pharmacist-In-Charge (PIC)
13 heard from respondent for at least two weeks. At that point, respondent called the pharmacy and
14 told J.G. that he had been in the hospital and respondent wanted to know if he had been
15 terminated, and the status of his health insurance. J.G. referred respondent to the PIC.

16 C. PIC H. told the inspectors that respondent was still an employee but that
17 they had had problems with him. The PIC told them respondent was in the Pharmacist's
18 Recovery Program because of many instances of substance abuse with cocaine and alcohol over
19 a period of many years. PIC H. told the inspectors he was respondent's Worksite Monitor and
20 that he was in frequent contact with T.W., respondent's Case Manager at the Diversion Program.

21 D. PIC H. further told the inspectors that he had hired respondent in May of
22 1998, and that Respondent was a good pharmacist, but that he relapsed in the spring of 1999, and
23 was suspended from work for three weeks. After that respondent seemed to do well in his
24 recovery program.

25 E. On June 23, 2000, PIC H. left to go on vacation. Prior to leaving he asked
26 respondent if he would be able to take care of the pharmacy in PIC H's absence. PIC H. also
27 scheduled another pharmacist and a relief pharmacist to assist respondent. PIC H. called J.G. on

28 ///

1 June 30, 2000, who told him respondent was acting "antsy" and asked for July 3rd off from work.
2 This concerned PIC H. so much that he returned home early from his vacation.

3 F. Upon arriving at the pharmacy on July 5, 2000, PIC H. was told by J.G.
4 that respondent was having problems adjusting to his medication and unable to work.

5 G. During the next two weeks, respondent called the pharmacy periodically
6 with excuses as to why he could not work. PIC H. suspected respondent had again relapsed and
7 told him to call the diversion program and to apply for disability. During that conversation, an
8 appointment was set for August 6, 2000, for PIC H. and respondent to meet. Respondent failed
9 to come to the meeting. When confronted with his failure to come to the meeting, respondent
10 said he had surrendered his license to the Board and could not work in a pharmacy. Respondent
11 never returned to work at the pharmacy and was eventually terminated in December of 2000
12 when the pharmacy changed ownership. As of May, 2001, respondent's license was in an
13 inactive status. He was not working in the field of pharmacy and was participating in the
14 Board's Diversion Program.

15 H. On August 15, 2000, the Board received a letter from T.W. indicating that
16 respondent had relapsed and presently presented a risk to the public. In this letter T.W. informed
17 the Board that "Chris's relapses in the past have been dramatic and explosive resulting in injury
18 to both himself and those around him. He has also admitted to diverting drugs from the
19 pharmacy in the past. If he is working in a pharmacy he should be considered a risk to the
20 public."

21 I. On August 31, 2001, respondent enrolled into the Recovery Program in
22 lieu of discipline.

23 J. During the weekend of October 26-27, 2002, respondent worked at Long's
24 Drug Store #95 with pharmacy technician, R.W. She wrote a declaration under penalty of
25 perjury that during these two days respondent could not stand still. He was talking and laughing
26 to himself. He spent a lot of time in the last bay by the sink where he kept checking his
27 appearance in a small mirror. He made weird noises. He was very irritable, short and mean to
28 R.W. Respondent used sexually explicit and inappropriate language that made R.W. feel very

1 uncomfortable. She saw him drop pills on the floor and he told R.W. they were from two
2 different medications. She could not see what the pills were or what respondent did with them.
3 During R.W.'s lunch breaks another employee covered for R.W. This employee was E.E.

4 K. E.E. noticed that respondent's actions were jerky and erratic. He could not
5 stand still. He was constantly scratching his face and body. He wore make-up to work to cover
6 the scratches. E.E. observed respondent flailing his arms around, talking in a loud voice and
7 pacing in the pharmacy similar to a caged animal. When respondent was called out to the front
8 to give a consultation or answer a question his behavior was so strange that customers would
9 give him and E.E. strange looks. He had a very condescending voice when he spoke to R.W.
10 E.E. noticed that respondent's personality was very different from what he had observed of
11 respondent in the past.

12 L. Longs' received at least one complaint concerning respondent's behavior.

13 M. On the morning of October 28, 2002, respondent attended a diversion
14 support group meeting where it was evident he was under the influence, and he had visible track
15 marks from injecting drugs. Respondent admitted to the group he had been smoking cocaine,
16 and taking drugs from his employer.

17 N. Two group members drove respondent home where they found drug
18 paraphernalia, including syringes in the trash. The group facilitator, D.R. contacted P.F.,
19 respondent's new Case Manager at the Diversion Program, and informed him of respondent's
20 condition.

21 O. P.F. called respondent on the telephone. Respondent appeared to be under
22 the influence during the conversation. Respondent told P.F. that he had just been faking it about
23 being complaint with the program. Respondent stated he really wanted to do drugs and he did
24 not want sobriety. He said he had been using drugs for two weeks.

25 P. Respondent missed body-fluid testing on September 23, 2002, September
26 24, 2002, October 7, 2002, October 16, 2002, and October 28, 2002, which indicates his relapse
27 may have been going on for a month or more.

28 ///

1 Q. On October 29, 2002, the Board received a letter from P.F. at the
2 Diversion program notifying the Board that respondent was being terminated from the program
3 for non-compliance. The letter stated respondent had relapsed twice since entering the program,
4 with the most recent relapse occurring on October 28, 2002. Both relapses involved the use of
5 cocaine and in both occurrences respondent diverted medications from his employer.

6 R. The Diversion Program concluded that respondent would not benefit from
7 further participation in the program and due to his chronic relapsing and sustained use of
8 narcotics and cocaine, respondent is unsafe to practice and should be considered a great risk of
9 danger to the public.

10 S. On October 29, 2002, Inspector J.C. requested an audit of all opiate drugs
11 in Schedules II and III be completed by Mr. T., respondent's worksite monitor and PIC at
12 respondent's place of employment at Long's Drugs Store #95.

13 T. On November 4, 2002, Inspector J.C. went to Long's Drugs Store #95 and
14 was provided with a copy of the requested audit for the Schedule II Controlled Substances, which
15 indicated a shortage of Dilaudid 4mg, quantity of 20 tablets, Oxy IR 5 mg, quantity of 15 tablets
16 and Dexedrine 5 mg, quantity of 5 tablets.

17 U. PIC T. told the inspector that a perpetual inventory was kept of all
18 Schedule II controlled substances and the last actual count inventory was taken on May 8, 2002.
19 These substances are kept in a locker with only a pharmacist having access. Using the May 8
20 inventory, adding purchases and deleting prescriptions, then performing an actual count on
21 October 30, 2002, a discrepancy was revealed indicating the losses.

22 V. Since the May 8, 2002, inventory count, no prescriptions had been filled
23 for Dilaudid 4 mg or Dexedrine 5mg and only one prescription was filled for Oxy IR (Quantity
24 1000). PIC T. also provided a copy of a printout of the only Oxy IR fill and a copy of the DEA
25 106 Report of Theft or Loss of Controlled Substances.

26 W. Of the Scheduled III Controlled Substances the audit revealed 69 tablets of
27 Hydrocodone 10Mg/APAP 325 mg were unaccounted for and a supplemental DEA 106 Theft or
28 Loss report was filed listing that loss.

1 X. On or about November 15, 2002, respondent was terminated from Long's
2 Drug Store #95, for diverting drugs, and being under the influence of drugs. Respondent has
3 failed to respond to telephone calls from the Diversion Program, the Board or Longs Drug Store.

4 SECOND CAUSE FOR DISCIPLINE

5 (Self-Administration of Controlled Substances)

6 6. Respondent is further subject to disciplinary action under Section 4301(h)
7 of the Code and Health and Safety Code section 11170, in that respondent administered to
8 himself, any controlled substance, or used any dangerous drug or alcoholic beverages to the
9 extent or in a manner as to be dangerous or injurious to himself, to a person holding a license
10 under this chapter, or to any other person or to the public, as set forth above in paragraphs 5A
11 through and including paragraph 5X.

12 THIRD CAUSE FOR DISCIPLINE

13 (Violation of Statutes Regulating Controlled Substances)

14 7. Respondent is further subject to disciplinary action under Business and
15 Professions Code section 4301(j), in that respondent violated any of the statutes of this state or of
16 the United States regulating controlled substances and dangerous drugs as set forth above in
17 paragraphs 5A through and including paragraph 5X.

18 FOURTH CAUSE FOR DISCIPLINE

19 (Actions Warrant Denial of License)

20 8. Respondent is further subject to disciplinary action under Business and
21 Professions Code section 4301(p), in that respondent's actions or conduct would have warranted
22 denial of a license as set forth above in paragraphs 5A through and including paragraph 5X.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Obtained Controlled Substances by Way of Fraud, Misrepresentation,
25 Subterfuge or Concealment of a Material Fact)

26 9. Respondent is further subject to disciplinary action under Health and
27 Safety Code section 11173(a), in that he obtained or attempted to obtain controlled substances, or
28 procured or attempted to procure the administration of or prescription for controlled substances,

1 (1) by fraud, deceit, misrepresentation , or subterfuge; or (2) by the concealment of a material
2 fact, as set forth above in paragraphs 5A through and including paragraph 5X.

3 PRAYER

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

6 1. Revoking or suspending Original Pharmacist License Number RPH
7 45514, issued to Christian W. Respondent, RPH;

8 2. Ordering Christian W. Respondent, RPH to pay the Board of Pharmacy
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

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

12 DATED: 12/20/02

13
14 *Sherry Sedakis, for*
15 PATRICIA F. HARRIS
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21
22
23
24
25
26
27
28
19 03583110-SD2002AD0918