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Attorneys for Complainant

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

In the Matter of the Accusation Against: **EMPIRE PHARMACEUTICALS INC.** 3475 Old Conejo Rd, C-1 Newbury Park, CA 91320 Todd Andrew Gerbovaz, President Robert Frederick Weber, Vice President Carole Gerbovaz, Secretary Michael Gerbovaz, Treasurer Original Wholesale Permit No. WLS 3342 and **TODD ANDREW GERBOVAZ** 3475 Old Conejo Rd, Unite C-1 Newbury Park, CA 91320 Original Pharmacist Exemptee Permit No. EXC 13962 and **ROBERT FREDERICK WEBER** 7245 Garden Grove Blvd., J2 Garden Grove, CA 92641 Original Pharmacist Exemptee Permit No. EXC 16341 Respondents.	Case Nos. 2605 and 2632 OAH No. L-2005020320 **STIPULATED SURRENDER OF LICENSE AND ORDER RE: EMPIRE PHARMACEUTICALS INC. AND TODD ANDREW GERBOVAZ**

IT IS HEREBY STIPULATED AND AGREED by and between Complainant Patricia F. Harris, Executive Officer of the Board of Pharmacy, and Respondents Todd Andrew Gerbovaz and Empire Pharmaceuticals, Inc., that the following matters are true:

PARTIES

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

2. Todd Andrew Gerbovaz and Empire Pharmaceuticals, Inc. (collectively referred to herein as Respondents) are represented in this proceeding by Scott Williams, Esq., whose address is 43 East 400 South, Salt Lake City, Utah 84111, and telephone number is (801) 220-0700.

3. On or about September 22, 1997, the Board of Pharmacy (Board) issued Original Wholesale Permit No. WLS 3342 to Empire Pharmaceuticals Inc., with Todd Andrew Gerbovaz as President, Robert Frederick Weber as Vice President, Carole Gerbovaz as Secretary, and Michael Gerbovaz as Treasurer. Todd Andrew Gerbovaz has been the Exemptee-in-Charge since April 8, 2002. Said Wholesale Permit expired on September 1, 2003.

4. On or about September 22, 1997, the Board issued Original Pharmacist Exemptee Permit No. EXC 13962 to Todd Andrew Gerbovaz. Said Exemptee Permit expired on September 1, 2003.

JURISDICTION

5. Accusation No. 2605, 2632, 2633 was filed before the Board of Pharmacy, Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on October 9, 2003. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 2605, 2632, 2633 is attached as Exhibit A and incorporated herein by reference.

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ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2605, 2632, 2633. Respondents also have carefully read, fully discussed with counsel, and understand the effects of this Stipulated Surrender of License and Order.

7. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents understand and agree that the charges and allegations in Accusation No. 2605, 2632, 2633, if proven at a hearing, constitute cause for imposing discipline upon their Wholesale Permit and Pharmacist Exemptee Permit, and they hereby surrender their Wholesale Permit No. WLS 3343 and Pharmacist Exemptee Permit No. EXC 13962 for the Board's formal acceptance.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents agree that, at a hearing, if Complainant could establish a factual basis for the charges in the Accusation, Respondents hereby give up their right to contest those charges.

11. Respondents understand that by signing this stipulation they enable the Board to issue an order accepting the surrender of their Wholesale Permit No. WLS 3342 and Pharmacist Exemptee Permit No. EXC 13962 without further process.

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CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Original Wholesale Permit No. WLS 3342 issued to Empire Pharmaceuticals Inc. and Original Pharmacist Exemptee Permit No. EXC 13962 to Todd Andrew Gerbovaz are surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondents' Wholesale Permit and Exemptee Permit and the acceptance of the surrendered Wholesale Permit and Exemptee Permit by the Board shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of the license history of Respondents with the Board.

2. Respondents shall lose all rights and privileges as a pharmaceutical wholesaler and pharmacist exemptee in California as of the effective date of the Board's Decision and Order.

3. Respondents shall cause to be delivered to the Board their wall and pocket license certificates on or before the effective date of the Decision and Order.

4. Respondents understand and agree that if they ever apply for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondents must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 2605, 2632, 2633 shall be deemed to be true and correct when the Board determines whether to grant or deny the application or petition.

5. Should Respondents ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other heath care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 2605, 2632, 2633 shall be deemed to be true and correct for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6. Respondent Empire Pharmaceuticals, Inc. and/or Respondent Todd Andrew Gerbovaz shall pay the Board its costs of investigation and enforcement in the amount of $5,640.50 prior to issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order Re: Empire Pharmaceuticals, Inc. and Todd Andrew Gerbovaz and have fully discussed it with my attorney, Scott Williams. I understand the stipulation and the effect it will have on my Wholesale Permit and Exemptee Permit. I enter into this Stipulated Surrender of License and Order Re: Empire Pharmaceuticals, Inc. and Todd Andrew Gerbovaz voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8/9/05

TODD ANDREW GERBOVAZ, individually and
as President and Exemptee in Charge of
EMPIRE PHARMACEUTICALS, INC.
Respondents

I have read and fully discussed with Respondents Todd Andrew Gerbovaz and Empire Pharmaceuticals, Inc. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order Re: Empire Pharmaceuticals, Inc. and Todd Andrew Gerbovaz. I approve its form and content.

DATED: 8/8/05

SCOTT WILLIAMS
Attorney for Respondents Todd Andrew Gerbovaz
and Empire Pharmaceuticals, Inc.

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order Re: Empire Pharmaceuticals, Inc. and Todd Andrew Gerbovaz is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 8-9-05.

BILL LOCKYER, Attorney General
of the State of California

Erlinda G. Shrenger

ERLINDA G. SHRENGER
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: EMPIRE PHARMACEUTICALS, INC. and TODD ANDREW GERBOVAZ Respondents.	Case No. 2605 and 2632 OAH No. L-2005020320

DECISION AND ORDER

The attached Stipulated Surrender of License and Order Re: Empire Pharmaceuticals, Inc. and Todd Andrew Gerbovaz is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 16, 2005.

It is so ORDERED October 17, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2605, 2632, 2633

BILL LOCKYER, Attorney General
of the State of California
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BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against: **EMPIRE PHARMACEUTICALS INC.** 3475 Old Conejo Rd, C-1 Newbury Park, CA 91320 Todd Andrew Gerbovaz, President Robert Frederick Weber, Vice President Carole Gerbovaz, Secretary Michael Gerbovaz, Treasurer Original Wholesale Permit No. WLS 3342 and **TODD ANDREW GERBOVAZ** 3475 Old Conejo Rd, Unite C-1 Newbury Park, CA 91320 Original Exemption Certificate No. EXC 13962 and **ROBERT FREDERICK WEBER** 7245 Garden Grove Blvd., J2 Garden Grove, CA 92641 Original Exemption Certificate No. EXC 16341 Respondents.	Case Nos. 2605, 2632, and 2633 **A C C U S A T I O N**

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Complainant alleges:

PARTIES

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

2. On or about September 22, 1997, the Board of Pharmacy (Board) issued Original Wholesale Permit No. WLS 3342 to Empire Pharmaceuticals Inc. (Respondent Empire), with Todd Andrew Gerbovaz as President, Robert Frederick Weber as Vice President, Carole Gerbovaz as Secretary, and Michael Gerbovaz as Treasurer. Todd Andrew Gerbovaz has been the Exemptee-in-Charge since April 8, 2002. Said Wholesale Permit was in full force and effect at all times relevant to the charges brought herein and will expire on September 1, 2004, unless renewed.

3. On or about September 22, 1997, the Board issued Original Exemption Certificate No. EXC 13962 to Todd Andrew Gerbovaz (Respondent Gerbovaz). Said Exemption Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 1, 2004, unless renewed.

4. On or about August 16, 2001, the Board issued Original Exemption Certificate No. EXC 16341 to Robert Frederick Weber (Respondent Weber). Said Exemption Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2004, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 4300 of the Code provides, in part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 of the Code states, in part:

"The board shall take action against any holder of a license who is guilty of

unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

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

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

8. Section 4059.5, subdivision (b) of the Code, states:

"A dangerous drug or dangerous device transferred, sold, or delivered to any person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent."

9. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee,

for maintaining the records and inventory described in this section.

10. Section 4163 of the Code states:

"No manufacturer or wholesaler shall furnish any dangerous drugs or dangerous devices to any unauthorized persons."

11. Section 4332 of the Code provides, in part:

"Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the Board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor."

12. Title 16, California Code of Regulations (C.C.R.), section 1709, subdivision (a), states:

"Each permit to operate a pharmacy shall show the name and address of the pharmacy, the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each pharmacy shall, in its initial application on the annual renewal form, report the name of the pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall be reported to the Board within 30 days."

13. Title 16, C.C.R., section 1718 states:

"Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332."

14. Title 16, C.C.R., section 1783 provides, in part:

"(a) A manufacturer or wholesaler shall furnish dangerous drugs or devices only to an authorized person; prior to furnishing dangerous drugs and devices to a person not known to the furnisher, the manufacturer or wholesaler shall contact the board or, if the person is licensed or registered by another government entity, that entity, to confirm the recipient is an authorized person.

"(b) Authorized person" means a person to whom the board has issued a permit

which enables the permit holder to purchase dangerous drugs or devices for use within the scope of its permit. "Authorized person" also means any person in this state or in another jurisdiction within the United States to the extent such furnishing is authorized by the law of this state, any applicable federal law, and the law of the jurisdiction in which that person is located. The manufacturer or wholesaler furnishing to such person shall, prior to furnishing the dangerous drugs and devices, establish the intended recipient is legally authorized to receive the dangerous drugs or devices.

. . . .

"(e) All records of dangerous drugs or devices furnished by a manufacturer or wholesaler to an authorized person shall be preserved by the authorized person for at least three years from the date of making and shall, at all times during business hours, be open to inspection by authorized officers of the law at the licensed premises. The manufacturer or wholesaler shall also maintain all records of dangerous drugs or devices furnished pursuant to this section for at least three years from the date of making and shall, at all times during business hours, keep them open to inspection by authorized officers of the law at the premises from which the dangerous drugs or devices were furnished."

15. Section 118(b) of the Code provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

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

DANGEROUS DRUG

17. Viagra is a brand name for sildenafil citrate, which is categorized as a dangerous drug pursuant to Section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Furnished Dangerous Drugs to Unauthorized Persons)

18. Respondents Empire, Gerbovaz, and Weber, and each of them, are subject to disciplinary action pursuant to Sections 4301(j) and (o), 4163, and 4059.5(b) of the Code, and Title 16, C.C.R., section 1783(a) and (b), in that said Respondents, and each of them, sold and furnished a dangerous drug (Viagra) to unauthorized persons, as follows:

A. From on or about January 8, 1999 to on or about July 13, 1999, Respondents sold and furnished Viagra (a dangerous drug) to an unauthorized person, to wit, Jafar Nauli, doing business as Wellchem Pharmaceuticals, who purchased $1,831,866 worth of Viagra from Respondents.

B. From on or about February 23, 2000 to on or about April 17, 2000, Respondents sold and furnished Viagra (a dangerous drug) to an unauthorized person, to wit, AA Medical Center, which purchased $389,256 worth of Viagra from Respondents.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate Records)

19. Respondents Empire, Gerbovaz, and Weber, and each of them, are subject to disciplinary action for unprofessional conduct, pursuant to Sections 4301(j) and (o) and 4081(a) of the Code, and Title 16, C.C.R., sections 1718 and 1783(e), in that Respondents failed to maintain accurate records of the acquisition and disposition of Viagra (a dangerous drug). Respondents failed to maintain accurate records of their purchase of $105,750 worth of Viagra from Owl Rexall Pharmacy on March 30, 1999.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide Records to the Board)

20. Respondents Empire, Gerbovaz, and Weber, and each of them, are subject to disciplinary action pursuant to Sections 4332 and 4301 (j) and (o) of the Code, in that Respondents failed to provide to the Board all records of the acquisition and disposition of a March 30, 1999 purchase of $105,750 worth of Viagra (a dangerous drug) from Owl Rexall Pharmacy.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Notify Board of Change in Owners or Corporate Officers)

21. Respondents Empire, Gerbovaz, and Weber, and each of them, are subject to disciplinary action for unprofessional conduct, pursuant to Section 4301(o) of the Code and Title 16, C.C.R., section 1709(a), in that said Respondents, and each of them, failed to notify the Board, within 30 days, of a change in the owners or corporate officers of Empire Pharmaceuticals Inc., namely the departure of Respondent Weber from Empire Pharmaceuticals Inc. on or about June/July 1999 (according to Respondent Weber) or November 2001 (according to Respondent Gerbovaz).

PRAYER

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

1. Revoking or suspending Original Wholesale Permit No. WLS 3342, issued to Empire Pharmaceuticals Inc.;

2. Revoking or suspending Original Exemption Certificate No. EXC 13962, issued to Todd Andrew Gerbovaz;

3. Revoking or suspending Original Exemption Certificate No. EXC 16341, issued to Robert Frederick Weber;

4. Ordering Empire Pharmaceuticals Inc., Todd Andrew Gerbovaz, and Robert Frederick Weber to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Taking such other and further action as deemed necessary and proper.

DATED: 9/29/03

P. F. Harris

PATRICIA F. HARRIS
Executive Officer, Board of Pharmacy,
Department of Consumer Affairs
State of California
Complainant

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