BILL LOCKYER, Attorney General
of the State of California
SUSAN MELTON WILSON, State Bar No. 106902
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4942
Facsimile: (213) 897-2804

Attorneys for Complainant

ORIGINAL

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>BANDANA TRADING INC.,<br>D.B.A. CORRECT TOUCH PHARMACY<br>4340 Santa Fe Rd., Suite B<br>San Luis Obispo, CA 93401<br><br>Pharmacy Permit No. PHY 46141,<br><br>JOHN GERADIN COLE<br>152 El Viento Ave.<br>Pismo Beach, CA 93449<br><br>Pharmacist License No. RPH 25702,<br><br>BANDANA TRADING D.B.A. CT<br>INTERNATIONAL<br>4340 Santa Fe Rd.<br>San Luis Obispo, CA 93401<br><br>Wholesale Permit No. WLS 3575,<br><br>and<br><br>MICHAEL STEPHEN KYLE<br>4340 Santa Fe Rd.<br>San Luis Obispo, CA 93401<br><br>Exemption Certificate No. EXC 15203 | Case No. 2761<br>OAH No. 2006070310<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER AS TO JOHN GERADIN COLE ONLY** |

IT IS HEREBY STIPULATED AND AGREED by and between Respondent JOHN GERADIN COLE and Complainant in the above-entitled proceeding that the

following matters are true:

PARTIES

1. At the time the Accusation was filed, Patricia F. Harris ("Complainant"), was the Executive Officer of the Board of Pharmacy, and brought this action solely in her official capacity. Virginia Herold is the current Interim Executive Office of the Board of Pharmacy. Both are represented in this matter by Bill Lockyer, Attorney General of the State of California, by Susan Melton Wilson, Deputy Attorney General.

2. Respondent JOHN GERADIN COLE ("Respondent") is represented in this proceeding by Law Offices of Gould and Hahn by Robert F. Hahn, whose address is 5801 Christie Avenue, Suite 385, Emeryville, California 94608.

3 On or about January 28, 2003, the Board issued Pharmacy Permit No. PHY 46141 to Bandana Trading Inc. d.b.a. Correct Touch Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2005, unless renewed. Michael Stephen Kyle, also a named respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003. John Geradin Cole, RPH 25702, a named respondent herein, was the *Pharmacist-in-Charge* of Respondent Correct Touch from February 20, 2003 through October 31, 2003.

4 On or about October 21, 1999, the Board issued Wholesale Permit No. WLS 3575 to Bandana Trading d.b.a. CT International. The Wholesale Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2004, unless renewed. Michael Stephen Kyle, also a named respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003, and is the Exemptee-in-Charge from October 21, 1999 through January 1, 2002, and now since October 2, 2002.

5 On or about August 14, 1968, the Board issued Pharmacist License No. RPH 25702 to John Geradin Cole (Respondent Cole). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2008, unless renewed. Respondent Cole was the *Pharmacist-in-Charge* of Respondent Correct Touch Pharmacy from February 20, 2003 through October 31, 2003.

## JURISDICTION

6 Accusation No. 2761 was filed before the Board of Pharmacy ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 2, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2761 is attached as **Exhibit A** and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

7 Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2761. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8 Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

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

## CULPABILITY

10 For purposes of resolving Accusation case No. 2761 without the expense and uncertainty of further proceedings, Respondent agrees that, at formal hearing, the Board would obtain sufficient evidence to enforce the conditions of probation defined below, and hereby gives up his right to contest charges of the Accusation, and agrees to be bound by the Board's imposition of discipline, as set forth in the Disciplinary Order below.

///

///

## CONTINGENCY

11 This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw his 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 Settlement 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.

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

13 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 Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 25702 issued to Respondent John Geradin Cole (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

2. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

3. **Interview with the Board.** Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

4. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of their probation. Failure to comply shall be considered a violation of probation.

5. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2761 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause their direct supervisor, pharmacist-in-charge and/or owner to report to the Board in

writing acknowledging the employer has read the decision in case number 2761.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2761 in advance of the Respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the Respondent is considered an employee or independent contractor.

7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of One Thousand, Eight Hundred Dollars ($ 1,800.00). Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

The filing of bankruptcy by Respondent shall not relieve Respondent of their responsibility to reimburse the Board its costs of investigation and prosecution.

9. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

10. **Status of License**. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If Respondent's license expires or is canceled by operation of law or otherwise,

upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender their license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish their pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 24 hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the

Business and Professions Code.

14. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

15. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mr. Robert Hahn, I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11-29-2006

JOHN GERADIN COLE
Respondent

I have read and fully discussed with Respondent John Geradin Cole the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12-1-06

Law Offices of Gould and Hahn
by: ROBERT F. HAHN
Attorney for Respondent

## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 12-6-06

BILL LOCKYER, Attorney General
of the State of California

SUSAN MELTON WILSON
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2004600497
60165674.1.wpd

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>BANDANA TRADING INC.,<br>d.b.a. CORRECT TOUCH PHARMACY<br>Pharmacy Permit No. PHY 46141,<br><br>JOHN GERADIN COLE<br>Pharmacist License No. RPH 25702,<br><br>BANDANA TRADING<br>d.b.a. CT INTERNATIONAL<br>Wholesale Permit No. WLS 3575,<br><br>and<br><br>MICHAEL STEPHEN KYLE<br>Exemption Certificate No. EXC 15203<br><br>Respondent. | Case No. 2761<br>OAH No. 2006070310 |

## DECISION AND ORDER REGARDING RESPONDENT COLE

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision regarding Respondent John Geradin Cole only in this matter.

This Decision shall become effective on February 21, 2007.

It is so ORDERED January 22, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

# Exhibit A

**Accusation No. 2761**

BILL LOCKYER, Attorney General
of the State of California
SUSAN MELTON WILSON, State Bar No. 106902
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4942
Facsimile: (213) 897-2804

Attorneys for Complainant

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>BANDANA TRADING INC.<br>d.b.a. CORRECT TOUCH PHARMACY<br>4340 Santa Fe Rd., Suite B<br>San Luis Obispo, CA 93401<br><br>Pharmacy Permit No. PHY 46141,<br><br>BANDANA TRADING<br>d.b.a. CT INTERNATIONAL<br>4340 Santa Fe Rd.<br>San Luis Obispo, CA 93401<br><br>Wholesale Permit No. WLS 3575,<br><br>JOHN GERADIN COLE<br>152 El Viento Ave.<br>Pismo Beach, CA 93449<br><br>Pharmacist License No. RPH 25702,<br><br>and<br><br>MICHAEL STEPHEN KYLE<br>4340 Santa Fe Rd.<br>San Luis Obispo, CA 93401<br><br>Exemption Certificate No. EXC 15203<br><br>Respondents. | Case No. 2761<br><br>**ACCUSATION** |

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 (Board).

2. On or about January 28, 2003, the Board issued Pharmacy Permit No. PHY 46141 to Bandana Trading Inc. d.b.a. Correct Touch Pharmacy (Respondent Correct Touch Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2005, unless renewed.

Michael Stephen Kyle, a named respondent herein, is the President since January 28, 2003.

John Geradin Cole, RPH 25702, a named respondent herein, was the Pharmacist-in-Charge from February 20, 2003 through October 31, 2003.

Since November 1, 2003. Kurt A. Marlinghaus, Pharmacist License No. RPH 43526, is the Pharmacist-in-Charge.

3. On or about October 21, 1999, the Board issued Wholesale Permit No. WLS 3575 to Bandana Trading d.b.a. CT International (Respondent CT International). The Wholesale Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2004, unless renewed.

Michael Stephen Kyle, a named respondent herein, is the President since January 28, 2003.

Michael Stephen Kyle, a named respondent herein, is the Exemptee-in-Charge from October 21, 1999 through January 1, 2002, and now since October 2, 2002.

4. On or about August 14, 1968, the Board issued Pharmacist License No. RPH 25702 to John Geradin Cole (Respondent Cole). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2004, unless renewed.

///

5. On or about October 21, 1999, the Board issued Exemption Certificate No. EXC 15203 to Michael Stephen Kyle (Respondent Kyle) to oversee the operations of a wholesale distributor in California. The Exemption Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2004, unless renewed.

JURISDICTION

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

7. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 4005 states:

"(a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishments licensed under this chapter; pertaining to establishments wherein any drug or device is compounded, prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter; and pertaining to the sale of drugs by or through any mechanical device.

"(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

"(c) The board may, by rule or regulation, adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. Every person who holds a license issued by the board shall be governed and controlled by the rules of professional conduct adopted by the board.

"(d) The adoption, amendment, or repeal by the board of these or any other board rules or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."

9. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

10. Section 4301 states, in pertinent 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:

. . . .

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

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

"(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. . . ."

11. Section 4059 states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

12. Section 4059.5, subdivision (a), states:

"Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery."

13. Section 4081 states, in pertinent part:

"(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."

14. Section 4113, subdivision (b), states:

"The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

///

15. Section 4160 states, in pertinent part:

"(a) No person shall act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board. . . ."

16. California Code of Regulations, title 16, section 1709.1 states, in pertinent part:

"The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy."

17. California Code of Regulations, title 16, section 1718 states, in pertinent part:

"'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."

18. Section 4307, subdivision (a), provides, in pertinent part, that any person whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a license.

19. Section 125.3 provides, in pertinent 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.

///

///

///

///

## WHOLESALE ACTIVITY AT 4340 SANTA FE ROAD

20. Respondent Correct Touch Pharmacy's address of record is 4340 Santa Fe Road, Suite B, San Luis Obispo, California 93401, with special business hours of Tuesdays for two hours.

21. On or between May 15, 2003 and November 18, 2003, Respondent Correct Touch Pharmacy did not fill any prescriptions.

22. On or between May 15, 2003 and November 19, 2003, Respondent Correct Touch Pharmacy had a record "Current Inventory" of zero.

23. Respondent CT International's address of record is 4340 Santa Fe Road, San Luis Obispo, California 93401.

24. Bandana Trading Inc. owns both Correct Touch Pharmacy and CT International with Respondent Kyle as the designated president for both.

25. On or between May 15, and October 31, 2003, Respondent Correct Touch Pharmacy purchased an inventory of at least $143,058.97 from wholesale licensed distributors AmerisourceBergen, Anda Inc., and Cardinal Health, who used the "ship to" address of 4340 Santa Fe Road, San Luis Obispo, California 93401, without a Suite B designation.

26. Respondent CT International is a licensed wholesale distributor. However, according to Respondent CT International, some larger wholesale distributors like AmerisourceBergen, would not sell certain drugs to Respondent CT International due to contractual agreements with the drug manufacturers.

27. Respondent Correct Touch Pharmacy was and is not a licensed distributor. Licensed pharmacies are permitted to buy from licensed distributors such as AmerisourceBergen, Anda Inc., and Cardinal Health.

28. One hundred percent of the purchases of dangerous drugs by Respondent Correct Touch Pharmacy were received, stored and sold by Respondent CT International.

29. Respondent CT International sold the dangerous drugs as retail sales to various surgical centers, hospitals, health centers and other pharmacies.

///

30. The classifications for the dangerous drugs purchased are listed below:

| BRAND NAME | GENERIC NAME | DANGEROUS DRUG PER B & PC 4022 | CONTROLLED SUBSTANCE PER H & SC | INDICATIONS FOR USE |
|---|---|---|---|---|
| Aldomet | Methyldopate | Yes | No | Anti-hypertension |
| Baciguent | Bacitracin | Yes | No | Antibiotic |
| Bio-Freeze Pain Relieving | Ilex | No | No | Herbal extract for treating pain |
| Brevital | Methohexital | Yes | No | Anesthetic |
| Compazine | Prochlorperazine | Yes | No | Nausea, Vomiting |
| Crofab | Crotalidae Polyvalent Immune | Yes | No | Rattle snake Antivenin |
| Darvon | Propoxyphene | Yes | Yes; Schedule IV; H&SC 11057(c)(2) | Pain |
| Depo-Testosterone | Testosterone | Yes | Yes; Schedule III; H&SC 11056(f)(30)o | Steroid |
| Erythrocin | Erythromycin | Yes | No | Antibiotic |
| Fluzone | Influenza Virus Vaccine | Yes | No | Flu vaccination |
| Fungizone | Amphotericin B | Yes | No | Antifungal agent |
| Glucagon | Glucagon | Yes | No | Anti-hypoglycemia (low blood sugar) |
| Mefoxin | Cefoxitin | Yes | No | Antibiotic |
| Nubain | Nalbuphine | Yes | No | Analgesic used with anesthesia |
| Povidine Iodine | Povidine Iodine | No | No | Anti-septic agent |
| Prinivil, Zestril | Lisinopril | Yes | No | Anti-hypertensive |
| Pulmicort | Budesonide | Yes | No | Anti-inflammation |
| Reglan | Metoclopramide | Yes | No | Nausea, Vomiting, Gastrointestinal stimulant |
| Solu-Cortef | Hydrocortisone Sodium Succinate | Yes | No | Severe inflammation; Life threatening shock; replacement therapy |

| | | | | |
|---|---|---|---|---|
| Solu-Medrol | Methylprednisolone | Yes | No | Anti-inflammatory; immunosuppressant |
| Thrombinar | Thrombin | Yes | No | Bleeding |
| Toradol | Ketorolac | | | Anti-inflammation |
| Unasyn | Ampicillin/Sulbactam | Yes | No | Antibiotic |
| Urispas | Flavoxate | Yes | No | Urinary tract spasms |
| X-Prep | Senna | No | No | Stimulant laxative |
| Zemuron | Rocuronium | Yes | No | Skeletal muscle relaxant |
| Zofran | Ondansetron | Yes | No | Nausea, Vomiting |

**CORRECT TOUCH PHARMACY AND JOHN GERADIN COLE**

FIRST CAUSE FOR DISCIPLINE

(Wholesaling Without a License)

31. Respondents CORRECT TOUCH PHARMACY and JOHN GERADIN COLE are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating section 4160, subdivision (a), in that on or between May 15, 2003 and October 31, 2003 (at which time Respondent Cole was responsible for the daily operations of Correct Touch Pharmacy), Respondent Correct Touch Pharmacy acted as an unlicensed wholesaler of dangerous drugs.

SECOND CAUSE FOR DISCIPLINE

(Permitting Non-Licensee to Receive Dangerous Drugs)

32. Respondents CORRECT TOUCH PHARMACY and JOHN GERADIN COLE are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with sections 4005 and 4059, in that on or between May 15, 2003 and October 31, 2003 (at which time Respondent Cole was responsible for the daily operations of Correct Touch Pharmacy), Respondents allowed deliveries of dangerous drugs to be signed for and received by CT International, not their designated pharmacist-in-charge, in violation of section 4059.5, subdivision (a), and California Code of Regulations, title 16, section 1709.1.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate Records)

33. Respondent CORRECT TOUCH PHARMACY and JOHN GERADIN COLE are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating section 4081, subdivision (a), in that on or between May 15, 2003 and October 31, 2003 (at which time Respondent Cole was responsible for the daily operations of Correct Touch Pharmacy), Respondents failed to maintain records of sale, acquisition or disposition of dangerous drugs or dangerous devises when Correct Touch Pharmacy received dangerous drugs from licensed wholesalers and transferred ownership of dangerous drugs to CT International without issuance of proper documentation.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain a Current Inventory)

34. Respondents CORRECT TOUCH PHARMACY and JOHN GERADIN COLE, Correct Touch Pharmacy's pharmacist-in-charge, is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating section 4081, subdivision (a), in that on or between May 15, 2003 and October 31, 2003 (at which time Respondent Cole was responsible for the daily operations of Correct Touch Pharmacy), Respondent Correct Touch Pharmacy failed to maintain a "Current Inventory" as defined by California Code of Regulations, title 16, section 1718.

**CT INTERNATIONAL**

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate Records and Current Inventory)

35. Respondent CT INTERNATIONAL, a licensed wholesaler, is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j), and (o), in conjunction with section 4005, for violating section 4081, subdivision (a), and California Code of Regulations, title 16, section 1709.1, in that on or

between May 15, 2003 and October 31, 2003, Respondent CT International failed to maintain records of sale, acquisition or disposition of dangerous drugs or dangerous devises and a "Current Inventory", as defined by California Code of Regulations, title 16, section 1718, when it received dangerous drugs from licensed wholesalers in the name of Correct Touch Pharmacy and transferred ownership of Correct Touch Pharmacy's dangerous drugs to retail vendors without issuance of proper documentation.

**MICHAEL STEPHEN KYLE**

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate Records and Current Inventory)

36. Respondent MICHAEL STEPHEN KYLE , Correct Touch Pharmacy's president and CT International's licensed exemptee, is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating sections 4081, subdivisions (a) and (b), in that on or between May 15, 2003 and October 31, 2003, Respondent Kyle failed to maintain records of sale, acquisition or disposition of dangerous drugs or dangerous devises and a "Current Inventory", as defined by California Code of Regulations, title 16, section 1718, for Correct Touch Pharmacy.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Pharmacy Laws and Regulations)

37. Respondent MICHAEL STEPHEN KYLE, Correct Touch Pharmacy's president and CT International's licensed exemptee, is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, and violating section 4113, subdivision (b), in that on or between May 15, 2003 and October 31, 2003, Respondent Kyle failed to comply with all state and federal laws and regulations pertaining to the practice of pharmacy for Correct Touch

\\\

\\\

\\\

Pharmacy when Correct Touch Pharmacy unprofessionally acted as an unlicensed wholesaler of dangerous drugs, had deliveries of dangerous drugs signed for and received by CT International, not their designated pharmacist-in-charge, and he failed to maintain accurate records and a "Current Inventory."

## 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:

A. Revoking or suspending Pharmacy Permit No. PHY 46141, issued to Bandana Trading Inc. d.b.a. Correct Touch Pharmacy.

B. Revoking or suspending Pharmacist License No. RPH 25702, issued to John Geradin Cole.

C. Revoking or suspending Wholesale Permit No. WLS 3575, issued to Bandana Trading d.b.a. CT International.

D. Revoking or suspending Exemption Certificate No. EXC 15203, issued to Michael Stephen Kyle.

E. Ordering Correct Touch Pharmacy, John Geradin Cole, CT International and Michael Stephen Kyle, and each of them, 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;

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

DATED: 11/22/04

P. F. Harris

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

Complainant

80025852