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

10 In the Matter of the Accusation Against:

Case No. 2893

11 **DAVID F. ANTOSZ**
12 6028 W. Judy Ct.
13 Visalia, California 93277

OAH No. 2006050083

STIPULATED SETTLEMENT;
ORDER AND DECISION

14 Pharmacist License No. RPH 46997

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 Jessica M. Amgwerd, Deputy
23 Attorney General.

24 2. David F. Antosz ("Respondent"), is represented by Tara K. Howard,
25 whose law office is located at 200 South Mooney Blvd., Suite B, Visalia, CA 93291.

26 3. On or about March 14, 1994, the Board of Pharmacy issued Pharmacist
27 License No. RPH 46997 to Respondent. Respondent's license will expire on September 30,
28 2007, unless renewed.

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JURISDICTION

4. Accusation No. 2893 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 March 30, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2893 (also referred to as Case No. 2893) is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2893. Respondent also has carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. 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.

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

8. This settlement shall be for the purposes of this proceedings, any future proceedings before the parties and any other actions taken by or before any governmental agency responsible for licensing, and shall not be used for any civil or criminal proceedings.

CULPABILITY

9 Respondent admits he violated Business and Professions Code sections 4301(a), 4301(c) 4301(f), 4301(j), 4301(h), 4301(l), and 4301(o), based, *inter alia*, upon the following conduct from October 1999 through December 4, 2004, while working at Wal-Mart as a pharmacist:

1 a. Respondent obtained unknown quantities of the controlled
2 substance hydrocodone/acetaminophen, for his own personal use, by fraud,
3 deceit, misrepresentation, or subterfuge by writing and/or entering into
4 Wal-Mart's computer system multiple prescriptions for the medication
5 using fictitious patients' names and falsely documenting that the
6 prescriptions were authorized or prescribed by Drs. Hsu Shu-Dean and
7 Ihor Kalicinsky. Said physicians never authorized any prescriptions for
8 hydrocodone/acetaminophen for Dan Smith, Dan B. Smith, David
9 Anhoney, or Derral Anthoney.

6 b. Respondent dishonestly or fraudulently appropriated the
7 controlled substance hydrocodone/acetaminophen by stealing
8 unknown quantities of the medication directly from pharmacy
9 stock.

9 c. Respondent falsely made, altered, forged, uttered, passed
10 and attempted to pass, as genuine, numerous prescriptions for
11 hydrocodone/acetaminophen, as set forth in subparagraph (a)
12 above.

11 d. While on duty as a pharmacist, Respondent prescribed,
12 administered, or furnished unknown quantities of the controlled
13 substance hydrocodone/acetaminophen to himself that he filled or
14 took from pharmacy stock.

14 Respondent agrees that cause exists for discipline of his Pharmacist License No.
15 RPH 46997. Respondent also admits that on April 1, 2005, in the criminal case entitled, *The*
16 *People of the State of California vs. David Antosz*, (Case No. VCF 140455), he pled nolo
17 contendere plea to criminal violations arising out of his illegal activity at work.

18 10. Respondent understands that by signing this stipulation he enables the
19 Board to issue an order disciplining her Pharmacist License Number RPH 46997.

20 CONTINGENCY

21 11. This stipulation shall be subject to approval by the Board of Pharmacy.
22 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
23 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
24 without notice to or participation by Respondent. By signing the stipulation, Respondent
25 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
26 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
27 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
28 or effect, except for this paragraph, it shall be inadmissible in any legal action between the

1 parties, and the Board shall not be disqualified from further action by having considered this
2 matter.

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

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

9 **ORDER**

10 IT IS HEREBY ORDERED that License No. RPH 46997, issued to Respondent
11 DAVID F. ANTOSZ, is revoked. The revocation, however, is immediately stayed and
12 Respondent is placed on a probation for five (5) years. Additionally, Respondent agrees to the
13 following terms and conditions:

14 1. **Suspension.** License No. RPH 46997 issued to Respondent is suspended
15 for sixty (60) days, with credit for time documented not practicing. Additionally, prior to
16 resuming practice, Respondent must show evidence that the PRP approves a return to practice.

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

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

- 21 • An arrest or issuance of a criminal complaint for violation of any provision of the
22 Pharmacy Law, state and federal food and drug laws, or state and federal
controlled substances laws.
- 23 • A plea of guilty or nolo contendere in any state or federal criminal proceeding to
24 any criminal complaint, information or indictment.
- 25 • A conviction of any crime.
- 26 • Discipline, citation, or other administrative action filed by any state and federal
27 agency which involves Respondent's pharmacist 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.

28 3. **Reporting to the Board.** Respondent shall report to the Board

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

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

10 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
11 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
12 compliance with the terms and conditions of his probation. Failure to comply shall be
13 considered a violation of probation.

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

16 7. **Notice to Employers.** Respondent shall notify all present and
17 prospective employers of the decision in case number 2893 and the terms, conditions and
18 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
19 this decision, and within 15 days of Respondent undertaking new employment, Respondent
20 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
21 writing acknowledging the employer has read the decision in case number 2893. If
22 Respondent works for or is employed by or through a pharmacy employment service,
23 Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every
24 pharmacy of the and terms conditions of the decision in case number 2893 in advance of the
25 Respondent commencing work at each pharmacy.

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

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

6 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
7 its costs of investigation and prosecution in the amount of Five Thousand Eight Hundred
8 Dollars (\$5,800.00). Said costs shall be paid within sixty days of the effective date of the
9 Decision, or upon good cause shown Respondent may be permitted to pay quarterly payments
10 in a payment plan approved by the Board, with payments to be completed no later than three
11 months prior to the end of the probation term.

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

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

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

21 If Respondent's license expires or is cancelled by operation of law or otherwise,
22 upon renewal or reapplication, Respondent's license shall be subject to all terms and
23 conditions of this probation not previously satisfied.

24 12. **License Surrender while on Probation/Suspension.** Following the
25 effective date of this decision, should Respondent cease practice due to retirement or health, or
26 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
27 her license to the Board for surrender. The Board shall have the discretion whether to grant
28 the request for surrender or take any other action it deems appropriate and reasonable. Upon

1 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
2 terms and conditions of probation.

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

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

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

20 "Cessation of practice" means any period of time exceeding 30 days in which
21 Respondent is not engaged in the practice of pharmacy as defined in Section
22 4052 of the Business and Professions Code.

23 **15. Supervised Practice.** As determined by the PRP, Respondent shall
24 practice only under the supervision of a pharmacist not on probation with the Board, under the
25 terms determined by the PRP.

26 **16. Violation of Probation.** If Respondent violates probation in any
27 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
28 probation and carry out the disciplinary order which was stayed. If a petition to revoke

1 probation or an accusation is filed against Respondent during probation, the Board shall have
2 continuing jurisdiction and the period of probation shall be extended, until the petition to
3 revoke probation or accusation is heard and decided.

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

9 17 **Completion of Probation.** Upon successful completion of probation,
10 Respondent's license will be fully restored.

11 18. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**
12 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
13 Recovery Program for evaluation and shall successfully participate in and complete the
14 treatment contract and any subsequent addendums as recommended and provided by the PRP
15 and as approved by the Board. The costs for PRP participation shall be borne by the
16 Respondent.

17 If Respondent is currently enrolled in the PRP, said participation is now
18 mandatory and is no longer considered a self-referral under Business and Professions Code
19 section 4363, as of the effective date of this decision. Respondent shall successfully
20 participate in and complete his current contract and any subsequent addendums with the PRP.
21 Probation shall be automatically extended until Respondent successfully completes his
22 treatment contract. Any person terminated from the program shall be automatically suspended
23 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
24 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
25 probation for any violation of this term.

26 19. **Random Drug Screening.** Respondent, at his own expense, shall
27 participate in random testing, including but not limited to biological fluid testing (urine,
28 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.

1 The length of time shall be for the entire probation period and the frequency of testing will be
2 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
3 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
4 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
5 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
6 in the immediate suspension of practice by Respondent. Respondent may not resume the
7 practice of pharmacy until notified by the Board in writing.

8 20. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
9 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
10 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
11 practitioner as part of a documented medical treatment. Upon request of the Board,
12 Respondent shall provide documentation from the licensed practitioner that the prescription
13 was legitimately issued and is a necessary part of the treatment of the Respondent.

14 21. **Tolling of Suspension.** If Respondent leaves California to reside or
15 practice outside this state, for any period exceeding 10 days (including vacation), Respondent
16 must notify the Board in writing of the dates of departure and return. Periods of residency or
17 practice outside the state - or any absence exceeding a period of 10 days shall not apply to the
18 reduction of the suspension period.

19 Respondent shall not practice pharmacy upon returning to this state until
20 notified by the Board that the period of suspension has been completed.

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1 ACCEPTANCE

2 I have carefully read the Stipulation, Decision and Order. I understand the
3 stipulation and the effect it will have on my Pharmacist License Number RPH 46997, and
4 have spoken to my attorney about the stipulation. I enter into this stipulation voluntarily,
5 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
6 Pharmacy.

7 DATED: 6-7-06.

8 
9 _____
10 DAVID F. ANTOSZ
Respondent

11 Dated: 6-7-06

12 TARA K. HOWARD

13
14 By: 
15 _____
TARA K. HOWARD, ESQ.

16 **Attorney for Respondent**

17 ENDORSEMENT

18 The foregoing Stipulation is hereby respectfully submitted for consideration by
19 the Board of Pharmacy of the Department of Consumer Affairs.

20 DATED: July 10, 2006.

21 BILL LOCKYER, Attorney General
22 of the State of California

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24 
25 _____
JESSICA M. AMGWERD
Deputy Attorney General

26 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:

DAVID F. ANTOSZ
6028 W. Judy Ct.
Visalia, California 93277

Pharmacist License No. RPH 46997

Respondent.

Case No. 2893

OAH No. 2006050083

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DECISION AND ORDER

The attached Stipulated Settlement 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 October 19, 2006.

It is so ORDERED September 19, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

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Exhibit A
Accusation No. 2893

1 BILL LOCKYER, Attorney General
of the State of California
2 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 445-7376
Facsimile: (916) 327-8643

6 Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2893

13 **DAVID F. ANTOSZ**
6028 W. Judy Ct.
14 Visalia, California 93277

ACCUSATION

15 Pharmacist License No. RPH 46997

Respondent.

16
17 Complainant alleges:

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

21 **I.**

22 **LICENSE INFORMATION**

23 2. On or about March 14, 1994, the Board issued Pharmacist License
24 Number RPH 46997 to David F. Antosz ("Respondent"). Respondent's pharmacist license was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2007, unless renewed.

27 ///

1 II.

2 STATUTORY PROVISIONS

3 3. Business and Professions Code ("Bus. & Prof. Code") section 4300 states,
4 in pertinent part:

5 (a) Every license issued may be suspended or revoked.

6 (b) The board shall discipline the holder of any license issued by the board,
7 whose default has been entered or whose case has been heard by the board and
8 found guilty, by any of the following methods:

8 (1) Suspending judgment.

9 (2) Placing him or her upon probation.

10 (3) Suspending his or her right to practice for a period not exceeding one
11 year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the
13 board in its discretion may deem proper . . .

14 4. Bus. & Prof. Code section 4301 states, in pertinent part:

15 The board shall take action against any holder of a license who is guilty of
16 unprofessional conduct or whose license has been procured by fraud or
17 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
18 is not limited to, any of the following:

18 (a) Gross immorality.

19

20 (c) Gross negligence.

21

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

24

25 (h) The administering to oneself, of any controlled substance, or the use of
26 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
27 dangerous or injurious to oneself, to a person holding a license under this chapter,
28 or to any other person or to the public, or to the extent that the use impairs the
ability of the person to conduct with safety to the public the practice authorized by
the license.

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

3
4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of
6 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
7 United States Code regulating controlled substances or of a violation of the
8 statutes of this state regulating controlled substances or dangerous drugs shall be
9 conclusive evidence of unprofessional conduct. In all other cases, the record of
10 conviction shall be conclusive evidence only of the fact that the conviction
11 occurred. The board may inquire into the circumstances surrounding the
12 commission of the crime, in order to fix the degree of discipline or, in the case of
13 a conviction not involving controlled substances or dangerous drugs, to determine
14 if the conviction is of an offense substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
16 or a conviction following a plea of nolo contendere is deemed to be a conviction
17 within the meaning of this provision. The board may take action when the time
18 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
19 or when an order granting probation is made suspending the imposition of
20 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
21 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
22 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
23 information, or indictment.

24
25 (o) Violating or attempting to violate, directly or indirectly, or assisting in
26 or abetting the violation of or conspiring to violate any provision or term of this
27 chapter or of the applicable federal and state laws and regulations governing
28 pharmacy, including regulations established by the board . . .

5. Bus. & Prof. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe
for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a -----," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

6. Bus. & Prof. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, or veterinarian,
or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant

1 to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
2 assistant pursuant to Section 3502.1. This section shall not apply to the
3 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
5 practitioner, or physician assistant, when in stock in containers correctly labeled
6 with the name and address of the supplier or producer . . .

7 7. Bus. & Prof. Code section 4324, subdivision (a), states:

8 Every person who signs the name of another, or of a fictitious person, or
9 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
10 genuine, any prescription for any drugs is guilty of forgery and upon conviction
11 thereof shall be punished by imprisonment in the state prison, or by imprisonment
12 in the county jail for not more than one year.

13 8. Bus. & Prof. Code section 4327 states that any person who, while on duty,
14 sells, dispenses or compounds any drug while under the influence of any dangerous drug or
15 alcoholic beverages shall be guilty of a misdemeanor.

16 9. Bus. & Prof. Code section 4342 states:

17 (a) The board may institute any action or actions as may be provided by
18 law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical
19 preparations and drugs that do not conform to the standard and tests as to quality
20 and strength, provided in the latest edition of the United States Pharmacopoeia or
21 the National Formulary; or that violate any provision of the Sherman Food, Drug
22 and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of
23 the Health and Safety Code).

24 (b) Any knowing or willful violation of any regulation adopted pursuant to
25 Section 4006 shall be subject to punishment in the same manner as is provided in
26 Sections 4336 and 4321.

27 10. Health and Safety Code ("Health & Saf. Code") section 11170 states that no
28 person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health & Saf. Code section 11173, subdivision (a), states, in pertinent part:

No person shall obtain or attempt to obtain controlled substances, or procure
or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

12. Health & Saf. Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses
(1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to

1 practice in this state, shall be punished by imprisonment in the state prison.

2 13. California Code of Regulations, title 16, section ("Regulation") 1714,
3 subdivision (d), states:

4 Each pharmacist while on duty shall be responsible for the security of the
5 prescription department, including provisions for effective control against theft or
6 diversion of dangerous drugs and devices, and records for such drugs and devices.
7 Possession of a key to the pharmacy where dangerous drugs and controlled
8 substances are stored shall be restricted to a pharmacist.

9 14. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board may
10 request the administrative law judge to direct a licentiate found to have committed a violation or
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
12 and enforcement of the case.

13 15. "Vicodin" and "Norco", combination drugs containing hydrocodone and
14 acetaminophen, are Schedule III controlled substances as designated by Health & Saf. Code
15 section 11056, subdivision (e)(4), and are dangerous drugs within the meaning of Bus. & Prof.
16 Code section 4022 in that they are available by prescription only.

17 III.

18 GENERAL FACTUAL BACKGROUND

19 16. Circa 1997, Respondent began working as a pharmacist for Wal-Mart.
20 From October 1999 through December 4, 2004, Respondent stole hydrocodone medication
21 directly from the pharmacy shelf at Wal-Mart's Visalia store (Store No. 10-1826) located at 1819
22 E. Noble Avenue, Visalia, California. Additionally, Respondent made up at least three fictitious
23 names ("Dan Smith", "David Anhone", and "Derral Anthoney") and forged 35 prescriptions
24 (approximately 7,400 tablets of hydrocodone/acetaminophen) under the names of Drs. Hsu Shu-
25 Dean and Ihor Kalicinsky, in order to illegally obtain hydrocodone medication.

26 17. From 1999, through December 4, 2004, while working on duty as a
27 pharmacist, Respondent dispensed and/or illegally self-administered hydrocodone medication,
28 and/or came to work under the influence of controlled substances.

18 18. From 1999, through December 4, 2004, while working on duty as a
19 pharmacist, Respondent intentionally and fraudulently mixed hydrocodone/acetaminophen

1 tablets from his vials (i.e., that stored his own personal possession), with medications in Wal-
2 Mart stock. These medications were of unknown quality and cleanliness and were provided to an
3 unknown number of patients.

4 19. Circa November 2004, Wal-Mart discovered discrepancies in the inventory
5 of hydrocodone medications at their Visalia store (Store No. 10-1826). Wal-Mart employees
6 began an investigation, including a review of sales documentation as well as the installation of a
7 video camera in the pharmacy.

8 20. Wal-Mart began video surveillance of pharmacy activity at Store No. 10-
9 1826 on November 30, 2004. The videotape recorded on December 4, 2004, showed Respondent
10 taking a tablet of hydrocodone from the pharmacy shelf and walking away with the medication,
11 as well as Respondent taking bottles from the shelf and placing pills into a white prescription
12 bag. The computer filling record generated on December 4, 2004, (at the approximate time when
13 Respondent appeared on the surveillance video), revealed that Respondent completed a
14 prescription for "Dan Smith". The store records showed that the prescription was then taken to
15 register number 17 and sold at 18:04 hours. The videotapes showed Respondent in the area of
16 the registers at the time the prescription for Dan Smith was sold.

17 21. In December 2004, Respondent admitted on several occasions that he stole
18 hydrocodone from the pharmacy and illegally used the medications. On January 27, 2005, a
19 criminal felony case entitled, *The People of the State of California vs. David Antosz*, (Case No.
20 VCF 140455) was filed in the Tulare County Superior Court. On April 1, 2005, at the
21 Preliminary Setting, Respondent pled nolo contendere to all 7 criminal counts alleged in the
22 criminal complaint. A subsequent sentencing hearing on May 20, 2005, placed Respondent on
23 three years of probation with various terms and conditions.

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1 IV.

2 VIOLATIONS

3 **B&P §4301(a)**
4 (Gross Immorality)

5 22. By references, paragraphs 16 through 21 are incorporated herein by
6 reference. Respondent's pharmacist license is subject to disciplinary action pursuant to Bus. &
7 Prof. Code section 4301, subdivision (a), for committing acts of gross immorality. Between
8 1999 and December 2004, while employed by and on duty as a pharmacist at Wal-Mart,
9 Respondent mixed or intermingled hydrocodone/acetaminophen tablets which he had in his
10 personal possession (medications which he had earlier filled for himself using fraudulent
11 prescriptions) with medications in Wal-Mart's pharmacy stock. The medications in
12 Respondent's personal possession were of unknown quality and cleanliness and were
13 subsequently provided to an unknown number of patients.

14 **(B&P §4301(c))**
15 (Gross Negligence)

16 23. By references, paragraphs 16 through 21 are incorporated herein by
17 reference. Respondent's pharmacist license is subject to disciplinary action pursuant to Bus. &
18 Prof. Code section 4301, subdivision (c), in that in and between 1999 and December 2004, while
19 employed by and on duty as a pharmacist at Wal-Mart Pharmacy (Store No. 10-1826),
20 Respondent committed acts of gross negligence, as set forth in the preceding paragraph.

21 **(B&P §4301(f))**
22 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

23 24. By references, paragraphs 16 through 21 are incorporated herein by
24 reference. Respondent's pharmacist license is subject to disciplinary action pursuant to Bus. &
25 Prof. Code section 4301, subdivision (f), in that in and between 1999 and December 2004, while
26 employed by and on duty as a pharmacist at Wal-Mart Pharmacy (Store No. 10-1826),
27 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as
28 follows:

1 a. Respondent obtained unknown quantities of the controlled
2 substance hydrocodone/acetaminophen, for his own personal use, by
3 fraud, deceit, misrepresentation, or subterfuge by writing and/or
4 entering into Wal-Mart's computer system multiple prescriptions for
5 the medication using fictitious patients' names and falsely
6 documenting that the prescriptions were authorized or prescribed by
7 Drs. Hsu Shu-Dean and Ihor Kalicinsky. Said physicians never
8 authorized any prescriptions for hydrocodone/acetaminophen for Dan
9 Smith, Dan B. Smith, David Anhone, or Derral Anthony.

10 b. Respondent dishonestly or fraudulently appropriated the
11 controlled substance hydrocodone/acetaminophen by stealing
12 unknown quantities of the medication directly from pharmacy stock.

13 c. Respondent falsely made, altered, forged, uttered, passed and
14 attempted to pass, as genuine, numerous prescriptions for
15 hydrocodone/acetaminophen, as set forth in subparagraph (a) above.

16 **(B&P §4301(h))**

17 (Self-Administration of Controlled Substances)

18 25. By references, paragraphs 16 through 21 are incorporated herein by
19 reference. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section
20 4301, subdivision (h). Between 1999 and December 2004, while licensed as a pharmacist,
21 Respondent self-administered unknown quantities of the controlled substance
22 hydrocodone/acetaminophen.

23 **(B&P §4301(j))**

24 (Violations of State Statutes Regulating Controlled Substances and Dangerous Drugs)

25 26. Respondent's pharmacist license is subject to disciplinary action pursuant to
26 Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct, in
27 that in and between 1999 and December 2004, while licensed as a pharmacist, Respondent
28 violated the following state statutes regulating controlled substances and dangerous drugs:

29 a. B & P § 4060 Respondent possessed unknown quantities of the controlled
30 substance hydrocodone/acetaminophen without lawful
31 prescriptions for the medication from a physician, dentist,
32 podiatrist, optometrist, or veterinarian.

33 b. H&S §11350(a) Respondent possessed unknown quantities of the controlled
34 substance hydrocodone/acetaminophen without lawful
35 prescriptions for the medication from a physician, dentist,
36 podiatrist, optometrist, or veterinarian.

37 c. H&S §11170 While on duty as a pharmacist, Respondent prescribed,
38 administered, or furnished unknown quantities of the

1 controlled substance hydrocodone/acetaminophen to himself
2 that he filled or took from pharmacy stock.

3 d. H&S § 11173(a)

4 While on duty as a pharmacist at Wal-Mart
5 Respondent obtained or attempted to obtain, or
6 procured or attempted to procure the administration of or
7 prescription for the controlled substance
8 hydrocodone/acetaminophen, by fraud, deceit,
9 misrepresentation, or subterfuge.

10 e. B&P § 4324(a)

11 While on duty as a pharmacist, Respondent falsely made,
12 altered, forged, uttered, passed and attempted to pass, as
13 genuine, numerous prescriptions for
14 hydrocodone/acetaminophen.

15 **(B&P 4301(l))**
16 **(Criminal Conviction)**

17 27. Respondent's pharmacist license is subject to disciplinary action pursuant to
18 Bus. & Prof. Code section 4301, subdivision (l), on the grounds of unprofessional conduct, in
19 that on or about April 1, 2005, in the criminal proceeding titled *People v. David Antosz* (Super.
20 Ct. Tulare County, Visalia Division, 2005, Case No. VCF 140455), Respondent was convicted
21 by the court on his plea of nolo contendere to one count of violating Penal Code section 487,
22 subdivision (a) (grand theft by embezzlement, a felony), three counts of violating Health & Saf.
23 Code section 11173, subdivision (a) (obtaining controlled substances by fraud, a felony), and
24 three counts of violating Bus. & Prof. Code section 4324, subdivision (a) (forging prescriptions,
25 a felony), crimes substantially related to the qualifications, functions, and duties of a pharmacist.

26 **(B&P 4301(o))**

27 **(Violations of State Laws and Regulations Governing Pharmacy)**

28 28. Respondent's pharmacist license is subject to disciplinary action pursuant to
Bus. & Prof. Code section 4301, subdivision (o). Between 1999 and December 2004, while
employed by and on duty as a pharmacist at Wal-Mart Pharmacy, Respondent violated or
attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired
to violate, the following state laws and regulations governing pharmacy, including regulations
established by the Board:

- 1 a. B&P §4324(a) Respondent falsely made, altered, forged, uttered, published, passed,
2 or attempted to pass, as genuine, multiple prescriptions for
3 hydrocodone/acetaminophen, as set forth in subparagraph 24(a)
4 above.
- 5 b. B&P §4327 Respondent dispensed or compounded drugs while under the
6 influence of the dangerous drug hydrocodone/acetaminophen.
- 7 c. Reg 1714(d) Respondent failed to exercise responsibility for the security of the
8 prescription department while on duty as a pharmacist at Wal-Mart
9 Pharmacy, as set forth in paragraphs 22 through 27 above.

V.

PRAYER

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

- 12 1. Revoking or suspending Pharmacist License Number RPH 46997, issued to
13 David F. Antosz;
- 14 2. Ordering David F. Antosz to pay the Board of Pharmacy the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 3/24/06

19
20 P. J. Harris
21 PATRICIA F. HARRIS
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California

26 Complainant