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

Attorneys for Complainant

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 **STIPULATED SETTLEMENT; ORDER AND DECISION**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding 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 Jessica M. Amgwerd, Deputy Attorney General.

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

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

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:

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

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

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

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

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

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

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. By signing the stipulation, Respondent understands and agrees that he 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, 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 Order:

ORDER

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

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

2. **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 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.

3. **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.

4. **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.

5. **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 his probation. Failure to comply shall be considered a violation of probation.

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

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2893 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 his 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 2893. 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 2893 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.

8. **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.

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of Five Thousand Eight Hundred Dollars ($5,800.00). Said costs shall be paid within sixty days of the effective date of the Decision, or upon good cause shown Respondent may be permitted to pay quarterly payments 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 his responsibility to reimburse the Board its costs of investigation and prosecution.

10. **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.

11. **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 cancelled 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.

12. **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 her 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 his 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.

13. **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.

14. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty 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.

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

16. **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.

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

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

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

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

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

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

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

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

ACCEPTANCE

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

DATED: 6-7-06.

DAVID F. ANTOSZ
Respondent

Dated: 6-7-06

TARA K. HOWARD

By: TARA K. HOWARD, ESQ.

Attorney for Respondent

ENDORSEMENT

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

DATED: July 10, 2006.

BILL LOCKYER, Attorney General
of the State of California

JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for Complainant

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

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
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2893

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

Attorneys for Complainant

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 **ACCUSATION**

Complainant alleges:

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

I.

LICENSE INFORMATION

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

///

II.

STATUTORY PROVISIONS

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

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

4. Bus. & Prof. Code 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:

(a) Gross immorality.

. . . .

(c) Gross negligence.

. . . .

(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.

. . . .

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, 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.

. . . .

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

. . . .

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

. . . .

(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 . . .

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

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

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

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

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

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

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section109875) of Division 104 of the Health and Safety Code).

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

10. Health and Safety Code ("Health & Saf. Code") section 11170 states that no 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

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

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

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

14. Bus. & Prof. Code section 125.3 states, 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.

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

III.

GENERAL FACTUAL BACKGROUND

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

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

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

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

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

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

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

IV.

VIOLATIONS

B&P §4301(a)
(Gross Immorality)

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

(B&P §4301(c))
(Gross Negligence)

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

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

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

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

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

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

(B&P §4301(h))
(Self-Administration of Controlled Substances)

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

(B&P §4301(j))
(Violations of State Statutes Regulating Controlled Substances and Dangerous Drugs)

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

a.	B& P § 4060	Respondent possessed unknown quantities of the controlled substance hydrocodone/acetaminophen without lawful prescriptions for the medication from a physician, dentist, podiatrist, optometrist, or veterinarian.
b.	H&S §11350(a)	Respondent possessed unknown quantities of the controlled substance hydrocodone/acetaminophen without lawful prescriptions for the medication from a physician, dentist, podiatrist, optometrist, or veterinarian.
c	H&S §11170	While on duty as a pharmacist, Respondent prescribed, administered, or furnished unknown quantities of the

		controlled substance hydrocodone/acetaminophen to himself that he filled or took from pharmacy stock.
d.	H&S § 11173(a)	While on duty as a pharmacist at Wal-Mart Respondent obtained or attempted to obtain, or procured or attempted to procure the administration of or prescription for the controlled substance hydrocodone/acetaminophen, by fraud, deceit, misrepresentation, or subterfuge.
e.	B&P § 4324(a)	While on duty as a pharmacist, Respondent falsely made, altered, forged, uttered, passed and attempted to pass, as genuine, numerous prescriptions for hydrocodone/acetaminophen.

(B&P 4301(l)
(Criminal Conviction)

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

(B&P 4301(o))

(Violations of State Laws and Regulations Governing Pharmacy)

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:

a. B&P §4324(a) Respondent falsely made, altered, forged, uttered, published, passed, or attempted to pass, as genuine, multiple prescriptions for hydrocodone/acetaminophen, as set forth in subparagraph 24(a) above.

b. B&P §4327 Respondent dispensed or compounded drugs while under the influence of the dangerous drug hydrocodone/acetaminophen.

c. Reg 1714(d) Respondent failed to exercise responsibility for the security of the prescription department while on duty as a pharmacist at Wal-Mart Pharmacy, as set forth in paragraphs 22 through 27 above.

V.

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 Pharmacist License Number RPH 46997, issued to David F. Antosz;

2. Ordering David F. Antosz 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;

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

DATED: 3/24/06

P. F. Harris

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

Complainant

03583110-SA2004103046;

phd; 02/06/2006