

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

In the Matter of the Accusation Against:

DAVISON DRUG & STATIONERY
FRANKLIN P. DAVISON,
aka FRANKLIN PETESCH DAVISON, Owner
JAMES A. DAVISON, aka JAMES ARCH DAVISON,
Pharmacist-in-Charge
640 Market Street
Colusa, CA 95932

Original Pharmacy Permit No. PHY 47044

and

FRANKLIN PETESCH DAVISON
1114 Carson Street
Colusa, CA 95923

Original Pharmacist License No. RPH 42614

and

JAMES ARCH DAVISON
640 Market Street
Colusa, CA 95932

Original Pharmacist License No. RPH 20987

Respondents.

Case No. 5525

OAH No. 2016041013

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER [JAMES ARCH
DAVISON ONLY]**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on May 19, 2017.

It is so ORDERED on April 19, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the First Amended Accusation
12 Against:

13 **DAVISON DRUG & STATIONERY**
14 **FRANKLIN P. DAVISON,**
aka FRANKLIN PETESCH DAVISON,
15 **Owner**
16 **JAMES A. DAVISON,**
aka JAMES ARCH DAVISON, Pharmacist-
17 **in-Charge**
640 Market Street
Colusa, CA 95932

18 **Original Pharmacy Permit No. PHY 47044,**

19 **and**

20 **FRANKLIN PETESCH DAVISON**
1114 Carson Street
21 Colusa, CA 95923

22 **Original Pharmacist License No. RPH**
42614,

23 **and**

24 **JAMES ARCH DAVISON**
25 640 Market Street
26 Colusa, CA 95932

27 **Original Pharmacist License No. RPH 20987**

28 Respondents.

Case No. 5525

OAH No. 2016041013

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER [JAMES ARCH
DAVISON ONLY]

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
5 (Board). She brought this action solely in her official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Phillip L. Arthur, Deputy
7 Attorney General.

8 2. Respondent James Arch Davison (Respondent James Davison) is represented in this
9 proceeding by attorney Jonathan A. Klein, whose address is: 455 Market Street, Suite 1480, San
10 Francisco, CA 94105.

11 3. On or about March 2, 2005, the Board issued Original Pharmacy Permit Number
12 PHY 47044 to Franklin P. Davison, also known as Franklin Petesch Davison ("Respondent
13 Franklin Davison"), owner of Davison Drug & Stationery, with James A. Davison, also known as
14 James Arch Davison ("Respondent James Davison"), as pharmacist-in-charge. The original
15 pharmacy permit was in full force and effect at all times relevant to the charges brought herein
16 and will expire on March 1, 2017, unless renewed.

17 4. On or about November 1, 1958, the Board issued Original Pharmacist License
18 Number RPH 20987 to Respondent James Davison. The original pharmacist license was in full
19 force and effect at all times relevant to the charges brought herein and will expire on July 31,
20 2017, unless renewed.

21 JURISDICTION

22 5. First Amended Accusation No. 5525 was filed before the Board, and is currently
23 pending against Respondents. The First Amended Accusation and all other statutorily required
24 documents were properly served on Respondents on February 8, 2017. Respondents timely filed
25 their Notices of Defense contesting the First Amended Accusation.

26 6. A copy of First Amended Accusation No. 5525 is attached as Exhibit A and
27 incorporated herein by reference.

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1 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
2 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
3 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
4 in any legal action between the parties, and the Board shall not be disqualified from further action
5 by having considered this matter.

6 13. The parties understand and agree that Portable Document Format (PDF), electronic,
7 and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF,
8 electronic, and facsimile signatures thereto, shall have the same force and effect as the originals.

9 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
10 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
11 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
12 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
13 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
14 writing executed by an authorized representative of each of the parties.

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

18 **DISCIPLINARY ORDER**

19 IT IS HEREBY ORDERED that Original Pharmacist License Number RPH 20987 issued
20 to Respondent James Davison is revoked. However, the revocation is stayed and Respondent
21 James Davison is placed on probation for six (6) years on the following terms and conditions.

22 1. **Suspension**

23 As part of probation, Respondent James Davison is suspended from the practice of
24 pharmacy for thirty (30) days beginning the effective date of this Decision. This period of
25 suspension shall run consecutively to the thirty-day suspension of Respondent Franklin Davison's
26 Original Pharmacist License.

27 During suspension, Respondent James Davison shall not enter any pharmacy area or any
28 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer, or any

1 other distributor of drugs which is licensed by the Board, or any manufacturer, or where
2 dangerous drugs and devices or controlled substances are maintained. Respondent James
3 Davison shall not practice pharmacy nor do any act involving drug selection, selection of stock,
4 manufacturing, compounding, dispensing, or patient consultation; nor shall Respondent James
5 Davison manage, administer, or be a consultant to any licensee of the Board, or have access to or
6 control the ordering, manufacturing, or dispensing of dangerous drugs and devices or controlled
7 substances.

8 Respondent James Davison shall not engage in any activity that requires the professional
9 judgment of a pharmacist. Respondent James Davison shall not direct or control any aspect of the
10 practice of pharmacy. Respondent James Davison shall not perform the duties of a pharmacy
11 technician or a designated representative for any entity licensed by the Board.

12 Subject to the above restrictions, Respondent James Davison may continue to own or hold
13 an interest in any licensed premises in which he holds an interest at the time this Decision
14 becomes effective unless otherwise specified in this Order.

15 Failure to comply with this suspension shall be considered a violation of probation.

16 **2. Obey All Laws**

17 Respondent James Davison shall obey all state and federal laws and regulations.

18 Respondent James Davison shall report any of the following occurrences to the Board, in
19 writing, within seventy-two (72) hours of such occurrence:

- 20 • an arrest or issuance of a criminal complaint for violation of any provision of the
21 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
22 substances laws
- 23 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
24 criminal complaint, information, or indictment
- 25 • a conviction of any crime
- 26 • discipline, citation, or other administrative action filed by any state or federal agency
27 which involves Respondent James Davison's Original Pharmacist License or which is
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1 related to the practice of pharmacy or the manufacturing, obtaining, handling,
2 distributing, billing, or charging for any drug, device, or controlled substance.

3 Failure to timely report such occurrence shall be considered a violation of probation.

4 **3. Report to the Board**

5 Respondent James Davison shall report to the Board quarterly, on a schedule as directed by
6 the Board or its designee. The report shall be made either in person or in writing, as directed.

7 Among other requirements, Respondent James Davison shall state in each report under penalty of
8 perjury whether there has been compliance with all the terms and conditions of probation. Failure
9 to submit timely reports in a form as directed shall be considered a violation of probation. Any
10 period(s) of delinquency in submission of reports as directed may be added to the total period of
11 probation. Moreover, if the final probation report is not made as directed, probation shall be
12 automatically extended until such time as the final report is made and accepted by the Board.

13 **4. Interview with the Board**

14 Upon receipt of reasonable prior notice, Respondent James Davison shall appear in person
15 for interviews with the Board or its designee, at such intervals and locations as are determined by
16 the Board or its designee. Failure to appear for any scheduled interview without prior notification
17 to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its
18 designee during the period of probation, shall be considered a violation of probation.

19 **5. Cooperate with Board Staff**

20 Respondent James Davison shall cooperate with the Board's inspection program and with
21 the Board's monitoring and investigation of Respondent James Davison's compliance with the
22 terms and conditions of his probation. Failure to cooperate shall be considered a violation of
23 probation.

24 **6. Continuing Education**

25 Respondent James Davison shall provide evidence of efforts to maintain skill and
26 knowledge as a pharmacist as directed by the Board or its designee.

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1 **7. Notice to Employers**

2 During the period of probation, Respondent James Davison shall notify all present and
3 prospective employers of the Decision in case number 5525 and the terms, conditions, and
4 restrictions imposed on Respondent James Davison by the Decision, as follows:

5 Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of
6 Respondent James Davison undertaking any new employment, Respondent James Davison shall
7 cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge
8 employed during Respondent James Davison's tenure of employment), and owner to report to the
9 Board in writing acknowledging that the listed individual(s) has/have read the Decision in case
10 number 5525, and terms and conditions imposed thereby. It shall be Respondent James
11 Davison's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
12 acknowledgment(s) to the Board.

13 If Respondent James Davison works for or is employed by or through a pharmacy
14 employment service, Respondent James Davison must notify his direct supervisor, pharmacist-in-
15 charge, and owner at every entity licensed by the Board of the terms and conditions of the
16 Decision in case number 5525 in advance of Respondent James Davison commencing work at
17 each licensed entity. A record of this notification must be provided to the Board upon request.

18 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
19 (15) days of Respondent James Davison undertaking any new employment by or through a
20 pharmacy employment service, Respondent James Davison shall cause his direct supervisor with
21 the pharmacy employment service to report to the Board in writing acknowledging that he has
22 read the Decision in case number 5525 and the terms and conditions imposed thereby. It shall be
23 Respondent James Davison's responsibility to ensure that his employer(s) and/or supervisor(s)
24 submit timely acknowledgment(s) to the Board.

25 Failure to timely notify present or prospective employer(s) or to cause that/those
26 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
27 probation.

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1 "Employment" within the meaning of this provision shall include any full-time,
2 part-time, temporary, relief, or pharmacy management service as a pharmacist, or any
3 position for which a pharmacist license is a requirement or criterion for employment,
4 whether the respondent is an employee, independent contractor, or volunteer.

5 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
6 **Designated Representative-in-Charge, or Serving as a Consultant**

7 During the period of probation, Respondent James Davison shall not supervise any intern
8 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity
9 licensed by the Board, nor serve as a consultant unless otherwise specified in this Order.

10 Assumption of any such unauthorized supervision responsibilities shall be considered a violation
11 of probation.

12 **9. Reimbursement of Board Costs**

13 As a condition precedent to successful completion of probation, Respondent James Davison
14 shall pay to the Board its costs of investigation and prosecution in the amount of \$24,644.75,
15 jointly and severally with Respondents Davison Drug & Stationary and Franklin Petesch Davison.
16 Respondent James Davison shall be permitted to pay these costs in a payment plan approved by
17 the Board. There shall be no deviation from this schedule absent prior written approval by the
18 Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
19 violation of probation.

20 The filing of bankruptcy by Respondent James Davison shall not relieve Respondent James
21 Davison of his responsibility to reimburse the Board its costs of investigation and prosecution.

22 **10. Probation Monitoring Costs**

23 Respondent James Davison shall pay any costs associated with probation monitoring as
24 determined by the Board each and every year of probation. Such costs shall be payable to the
25 Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
26 deadline(s) as directed shall be considered a violation of probation.

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1 **11. Status of License**

2 Respondent James Davison shall, at all times while on probation, maintain an active,
3 current license with the Board, including any period during which suspension or probation is
4 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

5 If Respondent James Davison's license expires or is cancelled by operation of law or
6 otherwise at any time during the period of probation, including any extensions thereof due to
7 tolling or otherwise, upon renewal or reapplication Respondent James Davison's license shall be
8 subject to all terms and conditions of this probation not previously satisfied.

9 **12. License Surrender While on Probation/Suspension**

10 Following the effective date of this Decision, should Respondent James Davison cease
11 practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
12 probation, Respondent James Davison may tender his license to the Board for surrender. The
13 Board or its designee shall have the discretion whether to grant the request for surrender or take
14 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
15 the license, Respondent James Davison will no longer be subject to the terms and conditions of
16 probation. This surrender constitutes a record of discipline and shall become a part of
17 Respondent James Davison's license history with the Board.

18 Upon acceptance of the surrender, Respondent James Davison shall relinquish his pocket
19 and wall license to the board within ten (10) days of notification by the Board that the surrender is
20 accepted. Respondent James Davison may not reapply for any license from the Board for three
21 (3) years from the effective date of the surrender. Respondent James Davison shall meet all
22 requirements applicable to the license sought as of the date the application for that license is
23 submitted to the Board, including any outstanding costs.

24 **13. Notification of a Change in Name, Residence Address, Mailing Address, or**
25 **Employment**

26 Respondent James Davison shall notify the Board in writing within ten (10) days of any
27 change of employment. Said notification shall include the reasons for leaving, the address of the
28 new employer, the name of the supervisor and owner, and the work schedule if known.

1 Respondent James Davison shall further notify the Board in writing within ten (10) days of a
2 change in name, residence address, mailing address, or phone number.

3 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
4 phone number(s) shall be considered a violation of probation.

5 **14. Tolling of Probation**

6 Except during periods of suspension, Respondent James Davison shall, at all times while on
7 probation, be employed as a pharmacist in California for a minimum of forty (40) hours per
8 calendar month. Any month during which this minimum is not met shall toll the period of
9 probation, i.e., the period of probation shall be extended by one month for each month during
10 which this minimum is not met. During any such period of tolling of probation, Respondent
11 James Davison must nonetheless comply with all terms and conditions of probation.

12 Should Respondent James Davison, regardless of residency, for any reason (including
13 vacation) cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month
14 in California, Respondent James Davison must notify the Board in writing within ten (10) days of
15 the cessation of practice, and must further notify the Board in writing within ten (10) days of the
16 resumption of practice. Any failure to provide such notification(s) shall be considered a violation
17 of probation.

18 It is a violation of probation for Respondent James Davison's probation to remain tolled
19 pursuant to the provisions of this condition for a total period, counting consecutive and non-
20 consecutive months, exceeding thirty-six (36) months.

21 "Cessation of practice" means any calendar month during which Respondent
22 James Davison is not practicing as a pharmacist for at least forty (40) hours, as
23 defined by Business and Professions Code section 4000 et seq. "Resumption of
24 practice" means any calendar month during which Respondent James Davison is
25 practicing as a pharmacist for at least forty (40) hours as a pharmacist as defined by
26 Business and Professions Code section 4000 et seq.

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1 **15. Violation of Probation**

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

7 If Respondent James Davison violates probation in any respect, the Board, after giving
8 Respondent James Davison notice and an opportunity to be heard, may revoke probation and
9 carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not
10 required for those provisions stating that a violation thereof may lead to automatic termination of
11 the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed
12 against Respondent James Davison during probation, the Board shall have continuing jurisdiction
13 and the period of probation shall be automatically extended until the petition to revoke probation
14 or accusation is heard and decided, and the charges and allegations in the Accusation shall be
15 deemed true and correct.

16 **16. Completion of Probation**

17 Upon written notice by the Board or its designee indicating successful completion of
18 probation, Respondent James Davison's license will be fully restored.

19 **17. Restricted Practice**

20 Respondent James Davison's practice of pharmacy shall be restricted from dispensing
21 controlled substances until he completes six (6) hours of continuing education in corresponding
22 responsibility. Respondent James Davison shall submit proof satisfactory to the Board of
23 compliance with this term of probation. Respondent James Davison will be permitted to
24 commence this continuing education before the effective date of the Decision.

25 **18. Remedial Education**

26 Within thirty (30) days of the effective date of this Decision, Respondent James Davison
27 shall submit to the Board or its designee, for prior approval, an appropriate program of remedial
28 education related to corresponding responsibility, prescription drug abuse, naloxone, and

1 pharmacy law. The program of remedial education shall consist of at least six (6) hours per year,
2 for a total of forty-two (42) hours during the probationary period, which shall be completed
3 within six (6) years at Respondent James Davison's own expense. Fifty (50) percent of the forty-
4 two (42) total hours shall be "in person" training. All remedial education shall be in addition to,
5 and shall not be credited toward, continuing education (CE) courses used for license renewal
6 purposes.

7 Failure to timely submit or complete the approved remedial education shall be considered a
8 violation of probation. The period of probation will be automatically extended until such
9 remedial education is successfully completed and written proof, in a form acceptable to the
10 Board, is provided to the Board or its designee.

11 Following the completion of each course, the Board or its designee may require Respondent
12 James Davison, at his own expense, to take an approved examination to test Respondent James
13 Davison's knowledge of the course. If Respondent James Davison does not achieve a passing
14 score on the examination, this failure shall be considered a violation of probation. Any such
15 examination failure shall require Respondent James Davison to take another course approved by
16 the Board in the same subject area.

17 Respondent James Davison shall be restricted from the practice of dispensing controlled
18 substances until he completes six (6) hours of continuing education in corresponding
19 responsibility.

20 Respondent James Davison will be permitted to commence this remedial education before
21 the effective date of the Decision.

22 19. No Ownership of Licensed Premises

23 Respondent James Davison shall not own, have any legal or beneficial interest in, or serve
24 as a manager, administrator, member, officer, director, trustee, associate, or partner of any
25 business, firm, partnership, or corporation currently or hereinafter licensed by the Board.

26 Respondent James Davison shall sell or transfer any legal or beneficial interest in any entity
27 licensed by the Board within ninety (90) days following the effective date of this Decision and
28 shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest

1 any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation
2 of probation.

3 **20. Tolling of Suspension**

4 During the period of suspension, Respondent James Davison shall not leave California for
5 any period exceeding ten (10) days, regardless of purpose (including vacation). Any such
6 absence in excess of the (10) days during suspension shall be considered a violation of probation.
7 Moreover, any absence from California during the period of suspension exceeding ten (10) days
8 shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten
9 (10) days Respondent James Davison is absent from California. During any such period of
10 tolling of suspension, Respondent James Davison must nonetheless comply with all terms and
11 conditions of probation.

12 Respondent James Davison must notify the Board in writing within ten (10) days of
13 departure, and must further notify the Board in writing within ten (10) days of return. The failure
14 to provide such notification(s) shall constitute a violation of probation. Upon such departure and
15 return, Respondent James Davison shall not resume the practice of pharmacy until notified by the
16 Board that the period of suspension has been satisfactorily completed.

17 **21. Ethics Course**

18 Within sixty (60) calendar days of the effective date of this Decision, Respondent James
19 Davison shall enroll in a course in ethics, at Respondent James Davison's expense, approved in
20 advance by the Board or its designee. Failure to initiate the course during the first year of
21 probation, and complete it within the second year of probation, is a violation of probation.

22 Respondent James Davison shall submit a certificate of completion to the Board or its
23 designee within five days after completing the course.

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Exhibit A

First Amended Accusation No. 5525

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation Against:

Case No. 5525

12 **DAVISON DRUG & STATIONERY**
13 **FRANKLIN P. DAVISON,**
aka FRANKLIN PETESCH DAVISON, Owner
14 **JAMES A. DAVISON,**
aka JAMES ARCH DAVISON, Pharmacist-in-Charge
640 Market Street
15 Colusa, CA 95932

**FIRST AMENDED
ACCUSATION**

16 Original Pharmacy Permit No. PHY 47044,

17 and

18 **FRANKLIN PETESCH DAVISON**
1114 Carson Street
19 Colusa, CA 95923

20 Original Pharmacist License No. RPH 42614,

21 and

22 **JAMES ARCH DAVISON**
640 Market Street
23 Colusa, CA 95932

24 Original Pharmacist License No. RPH 20987

25 Respondents.

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1 Complainant alleges:

2 PARTIES

3 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
4 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

5 2. On or about March 2, 2005, the Board issued Original Pharmacy Permit Number
6 PHY 47044 to Franklin P. Davison, also known as Franklin Petesch Davison ("Respondent
7 Franklin Davison"), owner of Davison Drug & Stationery, with James A. Davison, also known as
8 James Arch Davison ("Respondent James Davison"), as pharmacist-in-charge ("PIC"). The
9 original pharmacy permit was in full force and effect at all times relevant to the charges brought
10 herein and will expire on March 1, 2017, unless renewed.

11 3. On or about August 3, 1989, the Board issued Original Pharmacist License Number
12 RPH 42614 to Respondent Franklin Davison. The original pharmacist license was in full force
13 and effect at all times relevant to the charges brought herein and will expire on July 31, 2017,
14 unless renewed.

15 4. On or about November 1, 1958, the Board issued Original Pharmacist License
16 Number RPH 20987 to Respondent James Davison. The original pharmacist license was in full
17 force and effect at all times relevant to the charges brought herein and will expire on July 31,
18 2017, unless renewed.

19 JURISDICTION

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

23 6. Code section 4300 states, in pertinent part:

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

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

27 (1) Suspending judgment.

28 (2) Placing him or her upon probation.

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

2 (4) Revoking his or her license.

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

5 7. Code section 4300.1 states:

6 The expiration, cancellation, forfeiture, or suspension of a board-issued
7 license by operation of law or by order or decision of the board or a court of law, the
8 placement of a license on a retired status, or the voluntary surrender of a license by a
9 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

10 8. Section 4307(a) of the Code states that:

11 Any person who has been denied a license or whose license has been
12 revoked or is under suspension, or who has failed to renew his or her license while it
13 was under suspension, or who has been a manager, administrator, owner member,
14 officer, director, associate, or partner of any partnership, corporation, firm, or
15 association whose application for a license has been denied or revoked, is under
16 suspension or has been placed on probation, and while acting as the manger,
administrator, owner, member, officer, director, associate, or partner had knowledge
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 manger,
administrator, owner, member, officer, director, associate, or partner of a licensee as
follows:

17 (1) Where a probationary license is issued or where an existing license is
18 placed on probation, this prohibition shall remain in effect for a period
not to exceed five years.

19 (2) Where the license is denied or revoked, the prohibition shall continue
20 until the license is issued or reinstated.

21 . . .

22 **STATUTORY AND REGULATORY PROVISIONS**

23 9. Code section 4301 states, in pertinent part:

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

27 . . .

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

(c) 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 or by any other state or federal regulatory agency

10 Code section 4113, subdivision (c), states that "[t]he 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."

11. Health and Safety Code section 11153, subdivision (a), states, in pertinent part:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription . . .

12. Health and Safety Code section 11200 states, in pertinent part:

(a) No person shall dispense or refill a controlled substance prescription more than six months after the date thereof.

(b) No prescription for a Schedule III or IV substance may be refilled more than five times and in an amount, for all refills of that prescription taken together, exceeding a 120-day supply

13. California Code of Regulations, title 16, section 1709.1, subdivision (a), states that "[t]he pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy."

14. California Code of Regulations, title 16, section 1761, states:

(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

COST RECOVERY

15. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 CONTROLLED SUBSTANCES

4 16. "Methadone" is a Schedule II controlled substance as designated by Health and
5 Safety Code section 11055, subdivision (c)(14).

6 17. "Morphine Sulfate IR (immediate release)" is a Schedule II controlled substance as
7 designated by Health and Safety Code section 11055, subdivision (b)(1)(L).

8 18. "Morphine Sulfate ER (extended release)" is a Schedule II controlled substance as
9 designated by Health and Safety Code section 11055, subdivision (b)(1)(L).

10 19. "Oxycodone" is a Schedule II controlled substance as designated by Health and
11 Safety Code section 11055, subdivision (b)(1)(M).

12 20. "Hydromorphone" is a Schedule II controlled substance as designated by Health and
13 Safety Code section 11055, subdivision (b)(1)(J).

14 21. "Fentanyl" is a Schedule II controlled substance as designated by Health and Safety
15 Code section 11055, subdivision (c)(8).

16 22. "Norco" is a compound consisting of 10 mg hydrocodone bitartrate, also known as
17 dihydrocodeinone, and 325 mg acetaminophen per tablet. At the time of the incidents described
18 below, Norco was classified as a Schedule III controlled substance pursuant to Health and Safety
19 Code section 11056, subdivision (e)(4).¹

20 23. "Vicodin" is a compound consisting of 5 mg hydrocodone bitartrate, also known as
21 dihydrocodeinone, and 500 mg acetaminophen per tablet. At the time of the incidents described
22 below, Vicodin was classified as a Schedule III controlled substance pursuant to Health and
23 Safety Code section 11056, subdivision (e)(4).

24 24. "Diazepam" is a Schedule IV controlled substance as designated by Health and Safety
25 Code section 11057, subdivision (d)(9).

26 ///

27 ¹ Hydrocodone has been rescheduled from a Schedule III to Schedule II controlled
28 substance via the Controlled Substances Act (21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c)).

1 25. "Klonopin," a brand of clonazepam, is a Schedule IV controlled substance as
2 designated by Health and Safety Code section 11057, subdivision (d)(7).

3 26. "Temazepam" is a Schedule IV controlled substance as designated by Health and
4 Safety Code section 11057, subdivision (d)(29).

5 27. "Lorazepam" is a Schedule IV controlled substance as designated by Health and
6 Safety Code section 11057, subdivision (d)(16).

7 STATEMENT OF FACTS

8 28. On or about November 15, 2013, the Medical Board of California revoked Dr. A. L.'s
9 physician's and surgeon's certificate. The revocation was stayed and Dr. A. L. was placed on
10 probation. Dr. A. L. was also suspended from the practice of medicine for 30 days. Dr. A. L.
11 was charged in the disciplinary proceeding with prescribing excessive amounts and high doses of
12 controlled substances.

13 29. The Drug Enforcement Administration had commenced an investigation of Dr. A. L.
14 and the pharmacies that filled prescriptions for his patients (the investigation was subsequently
15 halted due to the death of Dr. A. L. in December 2013).

16 30. A Board analyst ran CURES² reports showing Dr. A. L.'s prescribing habits.
17 Davison Drug & Stationery was identified as one of the two pharmacies dispensing the most
18 prescriptions for Dr. A. L.'s patients. Dr. A. L.'s practice was located in Colusa, California,
19 approximately three blocks from Davison Drug & Stationery.

20 31. On or about September 2, 2014, Board Inspector J. H. obtained CURES information
21 from September 1, 2011 to September 8, 2014, for Davison Drug & Stationery and three other
22 pharmacies located in close proximity to Davison Drug & Stationery, CURES reports that had
23 previously been requested by Board Inspector J. W., and CURES reports for six patients, TB, DJ,
24 RV, TS, SC, and SH, from January 1, 2009 to January 15, 2014. Inspector J. H. also requested
25 additional CURES reports for these patients from January 16 to September 8, 2014. Inspector J.

26
27 ² CURES is a database containing information on Schedule II through IV controlled
28 substances dispensed in California. It is a valuable investigative, preventive, and educational tool
for the healthcare community, regulatory boards, and law enforcement.

1 H. chose an additional nineteen patients to review, who had received prescriptions from Dr. A. L.,
2 patients EBW, MC, PC, JD, KL, GR, DV, DW, BP, TN1, RP, MP, JW, TW, JT, LT, KE, VM and
3 TN, a total of twenty-five patients. Inspector J. H. requested CURES information for each patient
4 from September 1, 2011 to September 8, 2014.

5 32. On or about September 17, 2014, Inspectors J. H. and J. W. conducted an inspection
6 of Davison Drug & Stationery. Respondent James Davison ("PIC Davison") was not present at
7 the pharmacy; however, owner and staff pharmacist, Respondent Franklin Davison ("RPH
8 Davison"), assisted with the inspection. RPH Davison stated that their normal service area was
9 fifty to sixty miles. During the inspection, Inspector J. H. collected several hardcopy
10 prescriptions for the twenty-five patients and had RPH Davison print the patient profiles for each
11 patient from September 1, 2011 to September 17, 2014.

12 33. On or about January 26, 2015, Inspector J. H. requested more hardcopy prescriptions
13 for the twenty-five patients.

14 34. Inspector J. H. reviewed the CURES reports for Davison Drug & Stationery and the
15 three other pharmacies, and compared the total number of controlled substances dispensed by the
16 pharmacies with the total number of controlled substances written by Dr. A. L. for the period
17 from September 1, 2011 to September 8, 2014. Inspector J. H. found that Davison Drug &
18 Stationery dispensed more controlled substances written by Dr. A. L. than any of the other
19 pharmacies. Inspector J. H. created a chart showing the roundtrip distance from the twenty-five
20 patients' homes to Dr. A. L.'s office in Colusa, to Davison Drug & Stationery, and back home.
21 Only eight of the patients lived in the pharmacy's trade area, defined by RPH Davison as fifty to
22 sixty miles from the pharmacy. Thirteen of the patients traveled more than one-hundred miles
23 one way to see Dr. A. L., six of the patients traveled more than five-hundred miles one way to Dr.
24 A. L., and five of the patients traveled more than two-thousand miles one way to see Dr. A. L.

25 35. Inspector J. H. created a chart based on the hardcopy prescriptions showing the
26 patient's initials, date of the prescription, prescription number, drug name, strength and quantity,
27 directions, diagnosis code, duration of the patient's treatment, and any abnormalities or unusual
28 findings. Inspector J. H. determined that there were a total of approximately 295 prescriptions

1 filled for the patients, approximately seventy-five of which were filled by PIC Davison and
2 approximately 218 of which were filled by RPH Davison. Inspector J. H. found that Dr. A. L.'s
3 prescribing practices showed duplication in therapy, and the same combinations of drugs were
4 prescribed for multiple patients, including fentanyl 100 mcg/h, morphine ER 100 mg or 200 mg,
5 methadone 10 mg, oxycodone 30 mg, hydromorphone 8 mg, morphine IR 30 mg, and
6 hydrocodone-APAP 10/325 mg. Dr. A. L. also prescribed more than one long acting opioid for
7 certain patients, short acting opioids together, and the highest strength available for certain drugs.
8 Further, Dr. A. L. prescribed unusually large quantities and doses of the controlled substances.

9 36. Inspector J. H. also found in reviewing the CURES information that Davison Drug &
10 Stationery had filled several prescriptions for controlled substances, including Klonopin,
11 clonazepam, temazepam, lorazepam, and Vicodin, for different patients over the amount of five
12 refills or the 120-day supply allowed by law. Inspector J. H. found five patients who had
13 prescriptions filled a total of seven times, including the original fill. This meant that the
14 prescriptions were refilled six times, which was over the maximum of five refills; most of them,
15 taken together, exceeded the maximum 120-day supply. Inspector J. H. requested the hardcopy
16 prescriptions for each patient and the refill approvals for each prescription.

17 FIRST CAUSE FOR DISCIPLINE

18 (Failure to Exercise Corresponding Responsibility for the 19 Proper Prescribing and Dispensing of Controlled Substances)

20 37. Respondent Franklin Davison's original pharmacy permit and original pharmacist
21 license are subject to disciplinary action pursuant to Code section 4301, subdivision (o), for
22 unprofessional conduct, in that Respondent violated or attempted to violate, directly or indirectly,
23 assisted in or abetted the violation of, or conspired to violate state laws and regulations governing
24 pharmacy, as follows: On and between January 1, 2009 and September 8, 2014, Respondent, as a
25 licensed pharmacist and owner and operator of Davison Drug & Stationery, failed to exercise his
26 corresponding responsibility for the proper prescribing and dispensing of controlled substances.
27 Specifically, Respondent dispensed numerous prescriptions for controlled substances to the
28 twenty-five patients, identified above, all of which had been issued by Dr. A. L., when

1 Respondent knew, or had objective reason to know, that the prescriptions were not issued for a
2 legitimate medical purpose as evidenced by several "red flags" or factors, including the
3 prescribing of large or excessive quantities and doses of highly abused controlled substances,
4 duplication of therapies for individual patients, multiple patients receiving the same drugs or
5 combinations of drugs, and the distances traveled by the patients to Dr. A. L.'s office and to
6 Davison Drug & Stationery, in violation of Health and Safety Code section 11153, subdivision
7 (a), and California Code of Regulations, title 16, section 1761, subdivision (b).

8 SECOND CAUSE FOR DISCIPLINE

9 (Violations of State Laws Regulating Controlled Substances)

10 38. Respondent Franklin Davison's original pharmacy permit and original pharmacist
11 license are subject to disciplinary action pursuant to Code section 4301, subdivision (j), for
12 unprofessional conduct, in that Respondent violated Health and Safety Code section 11200, as
13 follows: Respondent refilled multiple prescriptions for Schedule III and/or IV controlled
14 substances totaling more than a 120-day supply or more than five refills, as set forth in paragraph
15 36 above.

16 THIRD CAUSE FOR DISCIPLINE

17 (Failure to Exercise Corresponding Responsibility for the 18 Proper Prescribing and Dispensing of Controlled Substances)

19 39. Respondent James Davison's original pharmacist license is subject to disciplinary
20 action pursuant to Code section 4301, subdivision (c), for unprofessional conduct, in that
21 Respondent violated or attempted to violate, directly or indirectly, assisted in or abetted the
22 violation of, or conspired to violate state laws and regulations governing pharmacy, as follows:
23 On and between January 1, 2009 and September 8, 2014, Respondent, as a licensed pharmacist
24 and pharmacist-in-charge of Davison Drug & Stationery, failed to exercise his corresponding
25 responsibility for the proper prescribing and dispensing of controlled substances. Specifically,
26 Respondent dispensed numerous prescriptions for controlled substances to the twenty-five
27 patients, identified above, all of which had been issued by Dr. A. L., when Respondent knew, or
28 had objective reason to know, that the prescriptions were not issued for a legitimate medical

1 purpose as evidenced by several "red flags" or factors, including the prescribing of large or
2 excessive quantities and doses of highly abused controlled substances, duplication of therapies for
3 individual patients, multiple patients receiving the same drugs or combinations of drugs, and the
4 distances traveled by the patients to Dr. A. L.'s office and to Davison Drug & Stationery, in
5 violation of Health and Safety Code section 11153, subdivision (a), and California Code of
6 Regulations, title 16, section 1761, subdivision (b).

7 FOURTH CAUSE FOR DISCIPLINE

8 (Violations of State Laws Regulating Controlled Substances)

9 40. Respondent James Davison's original pharmacist license is subject to disciplinary
10 action pursuant to Code section 4301, subdivision (j), for unprofessional conduct, in that
11 Respondent violated Health and Safety Code section 11200, as follows: Respondent refilled
12 multiple prescriptions for Schedule III and/or IV controlled substances totaling more than a 120-
13 day supply or more than five refills, as set forth in paragraph 35 above.

14 OTHER MATTERS

15 41. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
16 PHY 47044 issued to Davison Drug & Stationery, Franklin P. Davison, aka Franklin Petesch
17 Davison, owner, Franklin P. Davison, aka Franklin Petesch Davison, shall be prohibited from
18 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
19 licensee for five years if Pharmacy Permit Number PHY 47044 is placed on probation or until
20 Pharmacy Permit Number PHY 47044 is reinstated if it is revoked.

21 MATTERS IN AGGRAVATION

22 42. To determine the degree of discipline to be assessed against Respondent James
23 Davison, if any, Complainant alleges as follows: On or about February 11, 2013, the Board
24 issued Citation and Fine No. CI 2012 54841 against Respondent James Davison for violating
25 Code section 4301, subdivision (g) (unprofessional conduct: knowingly making or signing any
26 certificate or other document that falsely represents the existence or nonexistence of a state of
27 facts), and Code section 4231, subdivision (d), in conjunction with California Code of
28 Regulations, title 16, section 1732.5 (failure to provide documentation substantiating completion

1 of continuing education/renewal requirements for pharmacist). The Board ordered Davison to
2 pay fines totaling \$400 by March 13, 2013. Davison paid the citation on or about March 1, 2013.

3 43. On or about October 30, 2015, the Board issued Citation and Fine Nos. CI 2014
4 64027 and CI 2015 67732 against Respondents for violating: (1) California Code of Regulations,
5 title 16, section 1716 (variation from prescription); (2) California Code of Regulations, title 16,
6 section 1707.3 (duty to review drug therapy); (3) Code section 4081(b), in conjunction with
7 California Code of Regulations, title 16, section 1717(b)(1) (records of dangerous drugs and
8 devices kept open for inspection; maintenance of records, current inventory; Pharmacist in charge
9 responsible for maintaining records/information shall be maintained for each prescription on file
10 and readily retrievable: date dispensed, name or initials of dispensing pharmacist. . .); and (4)
11 Code section 4125, in conjunction with California Code of Regulations, title 16, section
12 1711(e)(4) (Pharmacy Quality Assurance Program Required/Quality assurance program shall
13 advance error prevention. . .). The Board ordered Respondent James Davison to pay fines
14 totaling \$1,250 by November 29, 2015.

15 PRAYER

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

18 1. Revoking or suspending Original Pharmacy Permit Number PHY 47044, issued to
19 Franklin P. Davison, also known as Franklin Petesch Davison, owner of Davison Drug &
20 Stationery;

21 2. Revoking or suspending Original Pharmacist License Number RPH 42614, issued to
22 Franklin P. Davison, also known as Franklin Petesch Davison;

23 3. Revoking or suspending Original Pharmacist License Number RPH 20987, issued to
24 James A. Davison, also known as James Arch Davison;

25 4. Prohibiting Franklin P. Davison from serving as a manager, administrator, owner,
26 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
27 Number PHY 47044 is placed on probation or until Pharmacy Permit Number PHY 47044 is
28 reinstated if Pharmacy Permit Number 47044 issued to Davison Drug & Stationary is revoked;

1 5. Ordering Franklin P. Davison, also known as Franklin Petesch Davison, individually,
2 and as the owner of Davison Drug & Stationery, and James A. Davison, also known as James
3 Arch Davison, individually, and as pharmacist-in-charge of Davison Drug & Stationery, to pay
4 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
5 pursuant to Business and Professions Code section 125.3; and

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

7
8 DATED: 2/2/17

Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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