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2 FRANK H. PACOE
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation and
11 Petition to Revoke Probation Against:

Case No. 3651

12 **CT INTERNATIONAL**
13 **4340 Santa Fe Rd.**
San Luis Obispo, CA 93401

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

14 **Wholesaler Permit No. WLS 3575,**

15 **and**

16 **THERESA A. MUSGRAVE**
17 **4340 Old Santa Fe Road**
San Luis Obispo, California 93401

18 **Designated Representative No. EXC 16709**

19 Respondents.

20 Complainant alleges:

21
22 PARTIES

23 1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke
24 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,
25 Department of Consumer Affairs.

26 2. On or about October 21, 1999, the Board of Pharmacy issued Wholesaler License No.
27 WLS 3575 to CT International (Respondent CT). The Wholesaler License was in effect at all
28 times relevant to the charges brought herein and will expire on October 1, 2010, unless renewed.

1 COST RECOVERY

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation of the licensing
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

5
6 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

7 15. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 16. Section 4022 of the Code states, in pertinent part:

11 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
12 except veterinary drugs that are labeled as such, and includes the following:

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

15 ...

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

18 17. **Hyaluronidase** is an enzyme used to increase the absorption and/or dispersion of
19 other injected drugs. It is sold under brand names including **Vitrax**, **Amphadase**, **Hylenex**, and
20 **Hydase**. It is a dangerous drug as designated by Business and Professions Code section 4022.

21
22 FACTUAL BACKGROUND

23 18. Effective February 19, 2007, pursuant to a Stipulated Settlement and Disciplinary
24 Order adopted by the Board in prior Case No. 2761, Respondent CT’s Wholesaler License No.
25 WLS 3575 was revoked. However, revocation was stayed, and Respondent CT’s License was
26 placed on probation for a period of three (3) years, subject to Terms and Conditions (T&Cs)
27 numbering 1 through 13, including the requirement that Respondent CT obey all state and federal
28 laws and regulations substantially related to or governing the practice of pharmacy (T&C 1).

1 19. Inspection(s) of Respondent CT's facility by Board Inspector(s) discovered that on at
2 least seven (7) occasions in or between March 2008 and December 2009, Respondent CT did one
3 or both of the following with regard to Pharmacy H.P.P.¹: (1) purchased **hyaluronidase** that had
4 been compounded by Pharmacy H.P.P. for purposes of resale of the compounded drug to another
5 provider or pharmacy; and/or (2) sold or re-sold **hyaluronidase** compounded by Pharmacy H.P.P.
6 and/or by another licensed pharmacy to another provider or pharmacy.

7 20. Pharmacy H.P.P. is not licensed as a manufacturer by the California State Department
8 of Health Services. It is a compounding pharmacy licensed by the Board.

9
10 CAUSE FOR DISCIPLINE

11 **As to all Respondents**

12 (Conspiring, Assisting or Abetting Unlicensed Manufacturing)

13 21. Respondents are subject to discipline under section 4301(j) and/or (o), section 4033,
14 and/or section 4160 of the Code, and/or Health and Safety Code sections 111615 and/or 111655,
15 in that Respondents, as described in paragraphs 19 and 20 above, acted as a wholesaler for
16 Pharmacy H.P.P. for its compounded drug **hyaluronidase**, and by so doing conspired to assist,
17 and/or assisted or abetted, unlicensed manufacturing by Pharmacy H.P.P.

18
19 CAUSE TO REVOKE PROBATION

20 **As to Respondent CT**

21 (Failure to Obey All Laws)

22 22. At all times after the effective date (February 21, 2007) of the Decision and Order
23 imposing probation on Respondent CT's License, Term and Condition 1 of that Order required:

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

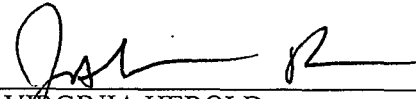
26 23. As described in paragraph 21 above, Respondent CT failed to obey all laws.

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28 ¹ The full name of this pharmacy shall be provided to Respondents in discovery.

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

DATED: FEBRUARY 19, 2010


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

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Exhibit A

Decision and Order

Board of Pharmacy (Prior) Case No. 2761

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

ORIGINAL

6 Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

11 BANDANA TRADING INC.,
d.b.a. CORRECT TOUCH PHARMACY
12 4340 Santa Fe Rd., Suite B
San Luis Obispo, CA 93401

13 Pharmacy Permit No. PHY 46141,
14

15 JOHN GERADIN COLE
152 El Viento Ave.
Pismo Beach, CA 93449

16 Pharmacist License No. RPH 25702,
17

18 BANDANA TRADING
d.b.a. CORRECT TOUCH INTERNATIONAL
4340 Santa Fe Rd.
19 San Luis Obispo, CA 93401

20 Wholesale Permit No. WLS 3575,
21

and

22 MICHAEL STEPHEN KYLE
4340 Santa Fe Rd.
23 San Luis Obispo, CA 93401

24 Exemption Certificate No. EXC 15203

Case No. 2761
OAH No. 2006070310

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENTS
BANDANA TRADING INC.
d.b.a. CORRECT TOUCH
PHARMACY
and
d.b.a. CT INTERNATIONAL
and
MICHAEL STEPHEN KYLE**

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26 IT IS HEREBY STIPULATED AND AGREED by and between all parties to the
27 above-entitled proceedings, other than individual Respondent John Geradin Cole, that the
28 following matters are true:

PARTIES

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

2. Respondent Bandana Trading Inc., doing business as Correct Touch Pharmacy, Respondent Bandana Trading Inc., doing business as CT International, and Respondent Michael Stephen Kyle as an individual licensee and president of Bandana Trading Company, Inc., are each represented in this proceeding by Law Offices of Hunter, Richey, DiBenedetto & Eisenbeis, by attorney James F. Geary, whose address is 520 Capitol Mall, Suite 400, Sacramento, Ca. 95814.

3 On or about January 28, 2003, the Board issued Pharmacy Permit No. PHY 46141 to Bandana Trading Inc. d.b.a. Correct Touch Pharmacy (Respondent Correct Touch). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2007, unless renewed. Michael Stephen Kyle, also a named respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003. John Geradin Cole, RPH 25702, a named respondent herein, was the *Pharmacist-in-Charge* of Respondent Correct Touch from February 20, 2003 through October 31, 2003.

4 On or about October 21, 1999, the Board issued Wholesale Permit No. WLS 3575 to Bandana Trading d.b.a. CT International (Respondent CT International). The Wholesale Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2007, unless renewed. Michael Stephen Kyle, also a named respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003, and is the *Exemptee-in-Charge* from October 21, 1999 through January 1, 2002, and now since October 2, 2002.

5 On or about August 14, 1968, the Board issued Pharmacist License No. RPH 25702 to John Geradin Cole (Respondent Cole). The Pharmacist License was in full force

1 waives and gives up each and every right set forth above.

2 CULPABILITY

3 11 Respondent Kyle, for himself and on behalf of Bandana Trading Inc.
4 d.b.a. Correct Touch Pharmacy only, admits the truth of each and every charge and allegation in
5 Accusation No. 2761, agrees that cause exists for discipline, and hereby surrenders *both*
6 Pharmacy Permit No. PHY 46141, issued to Bandana Trading Inc. d.b.a. Correct Touch
7 Pharmacy *and* Exemption Certificate No. EXC 15203 for the Board's formal acceptance.
8 Respondents understand that by signing this stipulation, he enables the Board to issue an order
9 accepting the surrender of *both* Pharmacy Permit No. PHY 46141 *and* Exemption Certificate No.
10 EXC 15203 without further process.

11 12. Respondent Kyle, on behalf of Bandana Trading Inc. d.b.a. CT
12 International only, admits the truth of each and every charge and allegation of Accusation No,
13 2761, and agrees that its *Wholesale Permit* No. WLS 3575 is subject to discipline and agrees to
14 be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in the
15 Disciplinary Order below.

16 CONTINGENCY

17 15 This stipulation shall be subject to approval by the Board of Pharmacy.
18 Respondents, and each of them understand and agrees that counsel for Complainant and the staff
19 of the Board of Pharmacy may communicate directly with the Board regarding this stipulation
20 and settlement, without notice to or participation by Respondent or its counsel. By signing the
21 stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek
22 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
23 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
24 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
25 action between the parties, and the Board shall not be disqualified from further action by having
26 considered this matter.

27 16 The parties understand and agree that facsimile copies of this Stipulated
28 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same

1 force and effect as the originals.

2 17 In consideration of the foregoing admissions and stipulations, the parties
3 agree that the Board may, without further notice or formal proceeding, issue and enter the
4 following Disciplinary Order:

5 **DISCIPLINARY ORDERS**

6
7 **RE: BANDANA TRADING INC., D.b.a. CORRECT TOUCH PHARMACY**
8 Pharmacy Permit No. PHY 46141

9 **AND**

10 **MICHAEL STEPHEN KYLE**
11 Exemption Certificate No. EXC 15203

12 **IT IS HEREBY ORDERED** that both Pharmacy Permit No. PHY 46141
13 issued to BANDANA TRADING INC., d.b.a. CORRECT TOUCH PHARMACY and
14 Exemption Certificate No. EXC 15203, issued to MICHAEL STEPHEN KYLE are surrendered
15 and accepted by the Board of Pharmacy .

16 1. The surrender of Pharmacy Permit No. PHY 46141 and Exemption
17 Certificate No. EXC 15203, and the acceptance of the surrendered licenses by the Board shall
18 constitute the imposition of discipline against Respondent. This stipulation constitutes a record
19 of the discipline and shall become a part of Respondents' license history with the Board.

20 2. Respondents shall lose all rights and privileges of the license in the state of
21 California as of the effective date of the Board's Decision and Order.

22 3. Respondent shall relinquish and cause to be delivered to the Board both
23 his wall and pocket renewal license to the Board on or before the effective date of the Decision
24 and Order.

25 4. Respondent understands and agrees that if he ever applies for licensure or
26 petitions for reinstatement in the State of California, the Board shall treat it as a new application
27 for licensure. Respondent must comply with all the laws, regulations and procedures for
28 licensure in effect at the time the application or petition is filed, and all of the charges and
allegations contained in Accusation No. 2761 shall be deemed to be admitted by Respondent

1 when the Board determines whether to grant or deny the application or petition.

2 5 Respondent shall not apply for licensure or petition for reinstatement for
3 three years from the effective date of the Board of Pharmacy's Decision and Order.

4 **RE: BANDANA TRADING INC., D.b.a. CT INTERNATIONAL**

5 Wholesale Permit No. WLS 3575

6 **IT IS HEREBY ORDERED** that *Wholesale Permit* No. WLS 3575 issued to
7 Bandana Trading d.b.a. CT International. (Respondent) is revoked. However, the revocation is
8 stayed and Respondent is placed on probation for three (3) years on the following terms and
9 conditions.

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

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

- 14 • an arrest or issuance of a criminal complaint for violation of any provision of the
15 Pharmacy Law, state and federal food and drug laws, or state and federal
16 controlled substances laws
- 17 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
18 any criminal complaint, information or indictment
- 19 • a conviction of any crime
- 20 • discipline, citation, or other administrative action filed by any state and federal
21 agency which involves Respondent's license or which is related to the practice
22 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
23 or charging for any drug, device or controlled substance.

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

1 Board.

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

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

10 5. **Reimbursement of Board Costs.** Respondent shall pay to the Board
11 its costs of investigation and prosecution pursuant to Business and Professions Code section
12 125.3 in the amount of Ten Thousand dollars. (\$10,000.00). Respondent shall be permitted to
13 pay these costs in a payment plan approved by the Board, with payments to be completed no
14 later than three months prior to the end of the probation term.

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

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

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

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

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

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

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

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

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

27 11. **Independent Consultant.** The wholesaler shall retain an independent
28 pharmacist consultant at its own expense who shall be responsible for reviewing wholesale

1 operations on a quarterly basis for compliance by respondent with state and federal
2 laws and regulations governing wholesaling. The consultant shall be a pharmacist licensed by
3 and not on probation with the board. The pharmacist consultant's name shall be submitted to
4 the board for its prior approval within 30 days of the effective date of this decision.

5 12 **Notice to Employees.** Respondent shall, upon or before the effective
6 date of this decision, ensure that all employees involved in permit operations are made aware
7 of all the terms and conditions of probation, either by posting a notice of the terms and
8 conditions, circulating such notice, or both. If the notice required by this provision is posted, it
9 shall be posted in a prominent place, and shall remain posted throughout the probation period.
10 Respondent shall ensure that any employees hired or used after the effective date of this
11 decision are made aware of the terms and conditions by posting a notice, circulating a notice,
12 or both.

13 “Employees” as used in this provision includes all full-time, part-time,
14 temporary and relief employees and independent contractors employed or hired at any time
15 during probation.

16 13. **Owners and Officers: Knowledge of the Law.** Respondent shall
17 provide, within 30 days after the effective date of this decision, signed and dated statements
18 from its owners, including any owner or holder of 10% or more of the interest in Respondent
19 or Respondent’s stock, and any officer , stating said individuals have read and are familiar
20 with state and federal laws and regulations governing the practice of pharmacy.

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1 such notice, or both. If the notice required by this provision is posted, it shall be posted in a
 2 prominent place, and shall remain posted throughout the probation period. Respondent shall ensure
 3 that any employees hired or used after the effective date of this decision are made aware of the
 4 terms and conditions by posting a notice, circulating a notice, or both.

5 "Employees" as used in this provision includes all full-time, part-time, temporary and
 6 relief employees and independent contractors employed or hired at any time during probation.

7 13. Owners and Officers: Knowledge of the Law . Respondent shall provide,
 8 within 30 days after the effective date of this decision, signed and dated statements from its owners,
 9 including any owner or holder of 10% or more of the interest in Respondent or Respondent's stock,
 10 and any officer, stating said individuals have read and are familiar with state and federal laws and
 11 regulations governing the practice of pharmacy.

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20
 21 ACCEPTANCE

22 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
 23 fully discussed it with my attorney, James F. Geary. I understand the stipulation and the effect it will
 24 have on my Exemption Certificate No. EXC 15203. I enter into this Stipulated Settlement and
 25 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
 26 Order of the Board of Pharmacy.

27 DATED: 12/5/06

28 
 MICHAEL STEPHEN KYLE

Respondent

I am the president of Bandana Trading Company, a corporation. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, James F. Geary. I understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 46141, and Wholesale Permit No. WLS 3575, held by Bandana Trading. By and on behalf of Bandana Trading Company, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree the corporation shall be bound by the Decision and Order of the Board of Pharmacy.

DATED: 12/5/06

Michael Stephen Kyle
MICHAEL STEPHEN KYLE, President
BANDANA TRADING INC.

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

DATED: 12/5/06

James F. Geary
Law Offices of Hunter, Richey, DiBenedetto & Eisenbeis,
by: JAMES F. GEARY
Attorney for Respondents

ENDORSEMENT

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

DATED: _____

BILL LOCKYER, Attorney General
of the State of California

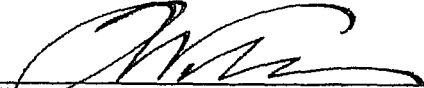
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ENDORSEMENT

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

DATED: 12-8-06

BILL LOCKYER, Attorney General
of the State of California



SUSAN MELTON WILSON
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2004600497

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BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BANDANA TRADING INC.,
d.b.a. CORRECT TOUCH PHARMACY
Pharmacy Permit No. PHY 46141,

JOHN GERADIN COLE
Pharmacist License No. RPH 25702,

BANDANA TRADING
d.b.a. CT INTERNATIONAL
Wholesale Permit No. WLS 3575,

and

MICHAEL STEPHEN KYLE
Exemption Certificate No. EXC 15203

Respondent.

Case No. 2761
OAH No. 2006070310

DECISION AND ORDER REGARDING RESPONDENTS
BANDANA TRADING COMPANY AND MICHAEL STEPHEN KYLE

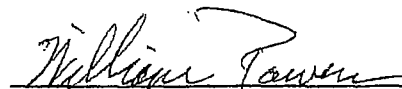
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision regarding Respondents Bandana Trading Company d.b.a. Correct Touch Pharmacy, Bandana Trading Company d.b.a. CT International and Michael Stephen Kyle only in this matter.

This Decision shall become effective on February 21, 2007.

It is so ORDERED January 22, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2761

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

6 Attorneys for Complainant

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8

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

9

10

11 In the Matter of the Accusation Against:

Case No. 2761

12

BANDANA TRADING INC.
d.b.a. CORRECT TOUCH PHARMACY
13 4340 Santa Fe Rd., Suite B
San Luis Obispo, CA 93401

ACCUSATION

14

Pharmacy Permit No. PHY 46141,

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BANDANA TRADING
d.b.a. CT INTERNATIONAL
17 4340 Santa Fe Rd.
San Luis Obispo, CA 93401

18

Wholesale Permit No. WLS 3575,

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20

JOHN GERADIN COLE
152 El Viento Ave.
21 Pismo Beach, CA 93449

22

Pharmacist License No. RPH 25702,

23

and

24

MICHAEL STEPHEN KYLE
25 4340 Santa Fe Rd.
San Luis Obispo, CA 93401

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Exemption Certificate No. EXC 15203

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Respondents.

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Complainant alleges:

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

10 10. Section 4301 states, in pertinent part:

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

15

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

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

21

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

24

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

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

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

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

11 13. Section 4081 states, in pertinent part:

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

22 “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
23 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee,
24 for maintaining the records and inventory described in this section.”

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

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

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1 15. Section 4160 states, in pertinent part:

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

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

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

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

10 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and
11 Professions Code shall be considered to include complete accountability for all dangerous drugs
12 handled by every licensee enumerated in Sections 4081 and 4332.”

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

21 19. Section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations
23 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

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

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

1	Solu-Medrol	Methylprednisolone	Yes	No	Anti-inflammatory; immunosuppressant
2					
3	Thrombinar	Thrombin	Yes	No	Bleeding
4	Toradol	Ketorolac			Anti-inflammation
5	Unasyn	Ampicillin/Sulbactam	Yes	No	Antibiotic
6	Urispas	Flavoxate	Yes	No	Urinary tract spasms
7	X-Prep	Senna	No	No	Stimulant laxative
8	Zemuron	Rocuronium	Yes	No	Skeletal muscle relaxant
9	Zofran	Ondansetron	Yes	No	Nausea, Vomiting

10 **CORRECT TOUCH PHARMACY AND JOHN GERADIN COLE**

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Wholesaling Without a License)

13 31. Respondents CORRECT TOUCH PHARMACY and JOHN GERADIN
 14 COLE are subject to disciplinary action under section 4300 for unprofessional conduct as defined
 15 in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating section
 16 4160, subdivision (a), in that on or between May 15, 2003 and October 31, 2003 (at which time
 17 Respondent Cole was responsible for the daily operations of Correct Touch Pharmacy),
 18 Respondent Correct Touch Pharmacy acted as an unlicensed wholesaler of dangerous drugs.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Permitting Non-Licensee to Receive Dangerous Drugs)

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

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

7 **MICHAEL STEPHEN KYLE**

8 **SIXTH CAUSE FOR DISCIPLINE**

9 (Failure to Maintain Accurate Records and Current Inventory)

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

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Failure to Comply with Pharmacy Laws and Regulations)

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

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

5 PRAYER

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

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

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

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

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

16 E. Ordering Correct Touch Pharmacy, John Geradin Cole, CT International
17 and Michael Stephen Kyle, and each of them, to pay the Board of Pharmacy the reasonable costs
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
19 section 125.3;

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

21
22 DATED: 11/22/04

23 P. J. Harris
24 PATRICIA F. HARRIS
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California

Complainant

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