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7

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

10 In the Matter of the Accusation Against:

Case No. 2773

11 LEWIS, DAVID CHARLES II  
9056 Talisman Drive  
12 Sacramento, CA 95826

**STIPULATION FOR REVOCATION  
OF LICENSE AND ORDER**

13 Pharmacist License No. RPH 30329

14 Respondent.  
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16 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
17 proceeding that the following matters are true:

18 PARTIES

19 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
20 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
21 by Bill Lockyer, Attorney General of the State of California, by Kent D. Harris, Deputy Attorney  
22 General.

23 2. DAVID CHARLES LEWIS, II (Respondent) is representing himself in  
24 this proceeding and has chosen not to exercise his right to be represented by counsel.

25 3. On or about June 29, 1976, the Board of Pharmacy issued Pharmacist  
26 License No. RPH 30329 to DAVID CHARLES LEWIS, II. The was in full force and effect at  
27 all times relevant to the charges brought in Accusation No. 2773 and will expire on June 30,  
28 2006, unless renewed.

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JURISDICTION

4. Accusation No. 2773 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 7, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2773 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2773. Respondent also has carefully read, and understands the effects of this Stipulated Revocation of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2773, agrees that cause exists for discipline of his Pharmacist License No. RPH 30329.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order revoking his Pharmacist License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation , without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulation shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

12. In consideration of the foregoing admissions and stipulations, the parties agree that the (Board) may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 30329, issued to Respondent LEWIS, DAVID CHARLES II is revoked.

13. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

14. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

15. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2773 shall be deemed to be true,

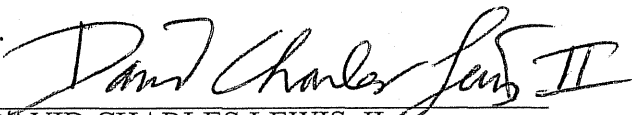
1 correct, and admitted by Respondent when the Board determines whether to grant or deny the  
2 petition. Respondent may not petition the Board for reinstatement of his license for three years  
3 from the effective date of this decision.

4 16. Respondent shall pay the Board its costs of investigation and enforcement  
5 in the amount of \$8,000.00 prior to issuance of a new or reinstated license.

6 ACCEPTANCE

7 I have carefully read the Stipulated Revocation of License and Order. I  
8 understand the stipulation and the effect it will have on my Pharmacist License . I enter into  
9 this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and  
10 agree to be bound by the Decision and Order of the Board of Pharmacy.

11 DATED: 3/14/05

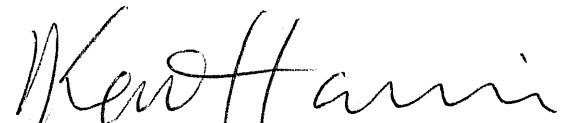
12   
13 DAVID CHARLES LEWIS, II  
14 Respondent

15 ENDORSEMENT

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

18  
19 DATED: 3/17/05

20  
21 BILL LOCKYER, Attorney General  
22 of the State of California

23   
24 KENT D. HARRIS  
25 Deputy Attorney General

26 Attorneys for Complainant

27 DOJ Docket Number/Matter ID: 03583110SA2004101414  
28 Lewis stipulation.wpd

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

In the Matter of the Accusation Against:

Case No. 2773

LEWIS, DAVID CHARLES II  
9056 Talisman Drive  
Sacramento, CA 95826

Pharmacist License No. RPH 30329

Respondent.

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**DECISION AND ORDER**

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

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This Decision shall become effective on May 27, 2005.


It is so ORDERED April 27, 2005.

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BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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By

  
STANLEY W. GOLDENBERG  
Board President

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**Exhibit A**  
**Accusation No. 2773**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 KENT D. HARRIS, State Bar No. 144804  
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3 California Department of Justice  
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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 **DAVID CHARLES LEWIS, II**  
P.O. Box 278531  
13 Sacramento, CA 95827-8531  
- and -  
14 9056 Talisman Drive  
Sacramento, CA 95826  
15 Pharmacist License No. RPH 30329  
16 Respondent.

Case No. 2773

**ACCUSATION**

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 29, 1976, the Board issued Pharmacist License Number  
24 RPH 30329 to David Charles Lewis, II ("Respondent"). On April 28, 2004, in the criminal  
25 proceeding titled *People v. David Charles Lewis* (Sacramento Sup. Ct., 2004, No. 04F03379),  
26 Respondent was ordered not to practice as a pharmacist as a condition of bail, pursuant to Penal  
27 Code section 23. Respondent's pharmacist's license will expire on June 30, 2006, unless  
28 renewed.

1 STATUTORY PROVISIONS

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

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

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

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

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

11 (4) Revoking his or her license.

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

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

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

17 . . . .

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

20 . . . .

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

22 . . . .

23 (l) The conviction of a crime substantially related to the qualifications,  
24 functions, and duties of a licensee under this chapter. The record of conviction of  
a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
25 United States Code regulating controlled substances or of a violation of the  
statutes of this state regulating controlled substances or dangerous drugs shall be  
26 conclusive evidence of unprofessional conduct. In all other cases, the record of  
conviction shall be conclusive evidence only of the fact that the conviction  
27 occurred. The board may inquire into the circumstances surrounding the  
commission of the crime, in order to fix the degree of discipline or, in the case of  
28 a conviction not involving controlled substances or dangerous drugs, to determine  
if the conviction is of an offense substantially related to the qualifications,



1 functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
2 or a conviction following a plea of nolo contendere is deemed to be a conviction  
3 within the meaning of this provision. The board may take action when the time  
4 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
5 or when an order granting probation is made suspending the imposition of  
6 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
7 Code allowing the person to withdraw his or her plea of guilty and to enter a plea  
8 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
9 information, or indictment.

6 . . . .

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

11 5. Bus. & Prof. Code section 4113, subdivision (b), states that the  
12 pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal  
13 laws and regulations pertaining to the practice of pharmacy.

13 6. Bus. & Prof. Code section 4022 states:

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

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

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

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

24 7. Bus. & Prof. Code Section 4059, subdivision (a), states:

25 A person may not furnish any dangerous drug, except upon the  
26 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A  
27 person may not furnish any dangerous device, except upon the prescription of a  
28 physician, dentist, podiatrist, optometrist, or veterinarian.

8. Bus. & Prof. Code section 4060 states, in pertinent part, that no person  
shall possess any controlled substance, except that furnished to a person upon the prescription of  
a physician, dentist, podiatrist, optometrist, or veterinarian.

///

1                   9.       Bus. & Prof. Code section 4063 states:

2                   No prescription for any dangerous drug or dangerous device may be  
3                   refilled except upon authorization of the prescriber. The authorization may be  
4                   given orally or at the time of giving the original prescription. No prescription for  
5                   any dangerous drug that is a controlled substance may be designated refillable as  
6                   needed.

7                   10.       Bus. & Prof. Code section 4076, subdivision (a), states:

8                   (a) A pharmacist shall not dispense any prescription except in a container  
9                   that meets the requirements of state and federal law and is correctly labeled with  
10                  all of the following:

11                  (1) Except where the prescriber or the certified nurse-midwife who  
12                  functions pursuant to a standardized procedure or protocol described in Section  
13                  2746.51, the nurse practitioner who functions pursuant to a standardized  
14                  procedure described in Section 2836.1, or protocol, or the physician assistant who  
15                  functions pursuant to Section 3502.1 orders otherwise, either the manufacturer's  
16                  trade name of the drug or the generic name and the name of the manufacturer.  
17                  Commonly used abbreviations may be used. Preparations containing two or more  
18                  active ingredients may be identified by the manufacturer's trade name or the  
19                  commonly used name or the principal active ingredients.

20                  (2) The directions for the use of the drug.

21                  (3) The name of the patient or patients.

22                  (4) The name of the prescriber and, if applicable, the certified  
23                  nurse-midwife who functions pursuant to a standardized procedure or protocol  
24                  described in Section 2746.51, the nurse practitioner who functions pursuant to a  
25                  standardized procedure described in Section 2836.1, or protocol, or the physician  
26                  assistant who functions pursuant to Section 3502.1.

27                  (5) The date of issue.

28                  (6) The name and address of the pharmacy, and prescription number or  
29                  other means of identifying the prescription.

30                  (7) The strength of the drug or drugs dispensed.

31                  (8) The quantity of the drug or drugs dispensed.

32                  (9) The expiration date of the effectiveness of the drug dispensed.

33                  (10) The condition for which the drug was prescribed if requested by the  
34                  patient and the condition is indicated on the prescription.

35                  11.       Bus. & Prof. Code section 4077, subdivision (a), states that except as  
36                  provided in subdivisions (b) and (c), no person shall dispense any dangerous drug upon  
37                  prescription except in a container correctly labeled with the information required by Section  
38                  4076.

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12. Bus. & Prof. Code section 4081 states, in pertinent part:

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

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

13. Bus. & Prof. Code section 4125, subdivision (a), states:

Every pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

14. Health and Safety Code ("Health & Saf. Code") section 11200, subdivision (b), states that 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.

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

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

16. Health & Saf. Code section 11352, subdivision (a), states:

Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer,

1 or give away, or attempts to import into this state or transport (1) any  
2 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1)  
3 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20)  
4 of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of  
5 Section 11055 or specified in subdivision (h) of Section 11056, or (2) any  
6 controlled substance classified in Schedule III, IV, or V which is a narcotic  
7 drug, unless upon the written prescription of a physician, dentist, podiatrist,  
8 or veterinarian licensed to practice in this state, shall be punished by  
9 imprisonment in the state prison for three, four, or five years.

10  
11 17. California Code of Regulations, title 16, section ("Regulation") 1711,  
12 subdivision (a), states:

13 Each pharmacy shall establish or participate in an established quality  
14 assurance program which documents and assesses medication errors to determine  
15 cause and an appropriate response as part of a mission to improve the quality of  
16 pharmacy service and prevent errors.

17  
18 18. Regulation 1714, subdivision (d), states:

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

24  
25 19. Regulation 1718 states:

26 "Current Inventory" as used in Sections 4081 and 4332 of the Business and  
27 Professions Code shall be considered to include complete accountability for all  
28 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section  
1304 shall be available for inspection upon request for at least 3 years after the date  
of the inventory.

20. Regulation 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility  
license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
Professions Code, a crime or act shall be considered substantially related to the  
qualifications, functions or duties of a licensee or registrant if to a substantial degree  
it evidences present or potential unfitness of a licensee or registrant to perform the  
functions authorized by his license or registration in a manner consistent with the  
public health, safety, or welfare.

21. Regulation 1793.7, subdivision (d), states:

Any pharmacy employing or using a pharmacy technician shall develop a job  
description and written policies and procedures adequate to ensure compliance with  
the provisions of Article 11 of this Chapter, and shall maintain, for at least three  
years from the time of making, records adequate to establish compliance with these  
sections and written policies and procedures.

1 Cost Recovery

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

6 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

7 23. "Adderall", an amphetamine, is a Schedule II controlled substance as  
8 designated by Health & Saf. Code section 11055, subdivision (d)(1), and a dangerous drug within  
9 the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

10 24. "Xanax", a brand name for alprazolam, is a Schedule IV controlled  
11 substance as designated by Health & Saf. Code section 11057, subdivision (d)(1), and a  
12 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
13 prescription only.

14 25. "Avandia", a brand name for rosiglitazone, is a dangerous drug within the  
15 meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

16 26. "Cleocin", a brand name for clindamycin, is a dangerous drug within the  
17 meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

18 27. "Klonopin", a brand name for clonazepam, is a Schedule IV controlled  
19 substance as designated by Health & Saf. Code section 11057, subdivision (d)(7), and a  
20 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
21 prescription only.

22 28. "Concerta", "Ritalin", and "Metadate", brand names for methylphenidate,  
23 are Schedule II controlled substances as designated by Health & Saf. Code section 11055,  
24 subdivision (d)(6), and are dangerous drugs within the meaning of Bus. & Prof. Code section  
25 4022 in that they are available by prescription only.

26 29. "Darvocet-N 100", a combination drug containing propoxyphene napsylate  
27 100 mg and APAP 650 mg, is a Schedule IV controlled substance as designated by Health & Saf.

28 ///

1 Code section 11057, subdivision (c)(2), and a dangerous drug within the meaning of Bus. & Prof.  
2 Code section 4022 in that it is available by prescription only.

3 30. "Dexedrine", a brand name for dextro-amphetamine, is a Schedule II  
4 controlled substance as designated by Health & Saf. Code section 11055, subdivision (d)(1), and  
5 a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
6 prescription only.

7 31. "Valium", a brand name for diazepam, is a Schedule IV controlled  
8 substance as designated by Health & Saf. Code section 11057, subdivision (d)(9), and a  
9 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
10 prescription only.

11 32. "Dilaudid", a brand name for hydromorphone hydrochloride, is a Schedule  
12 II controlled substance as designated by Health & Saf. Code section 11055, subdivision  
13 (b)(1)(K), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it  
14 is available by prescription only.

15 33. "Duragesic", a brand of fentanyl patch, is a Schedule II controlled substance  
16 as designated by Health & Saf. Code section 11055, subdivision (c)(8), and a dangerous drug  
17 within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

18 34. "Entex PSE", a combination drug containing guaifenesin 400 mg and  
19 Pseudoephedrine 120 mg, is a dangerous drug within the meaning of Bus. & Prof. Code section  
20 4022 in that it is available by prescription only.

21 35. "Fioricet", a combination drug containing butalbital 50 mg, acetaminophen  
22 325 mg, and caffeine 40 mg, is a dangerous drug within the meaning of Bus. & Prof. Code  
23 section 4022 in that it is available by prescription only.

24 36. "Motrin", a brand name for ibuprofen 400, 600 and 800 mg tablets, is a  
25 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
26 prescription only.

27 ///

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1           37.     "Methadone" is a Schedule II controlled substance as designated by Health  
2 & Saf. Code section 11055, subdivision (c)(14), and a dangerous drug within the meaning of  
3 Bus. & Prof. Code section 4022 in that it is available by prescription only.

4           38.     "MS Contin", a brand of morphine, is a Schedule II controlled substance as  
5 designated by Health & Saf. Code section 11055, subdivision (b)(1)(M), and a dangerous drug  
6 within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

7           39.     "Norco", a combination drug containing hydrocodone 10 mg and APAP 325  
8 mg, is a Schedule III controlled substance as designated by Health & Saf. Code section 11056,  
9 subdivision (e)(4), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022  
10 in that it is available by prescription only.

11           40.     "OxyContin", controlled release oxycodone, is a Schedule II controlled  
12 substance as designated by Health & Saf. Code section 11055, subdivision (b)(1)(N), and a  
13 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
14 prescription only.

15           41.     "Roxicodone", a brand name for oxycodone, is a Schedule II controlled  
16 substance as designated by Health & Saf. Code section 11055, subdivision (b)(1)(N), and a  
17 dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by  
18 prescription only.

19           42.     "Pepcid", a brand name for famotidine, is a dangerous drug within the  
20 meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

21           43.     "Percocet" and "Endocet", combination drugs containing oxycodone and  
22 acetaminophen, are Schedule II controlled substances as designated by Health & Saf. Code  
23 section 11055, subdivision (b)(1)(N), and are dangerous drugs within the meaning of Bus. &  
24 Prof. Code section 4022 in that they are available by prescription only.

25           44.     "Percodan", "Roxipirin", and "Endodan", combination drugs containing  
26 oxycodone hydrochloride 4.5 mg/oxycodone, terehthalate 0.38 mg, and aspirin 325 mg, are  
27 Schedule II controlled substances as designated by Health & Saf. Code section 11055,

28 ///

1 subdivision (b)(1)(N), and are dangerous drugs within the meaning of Bus. & Prof. Code section  
2 4022 in that they are available by prescription only.

3 45. "Vicodin" and "Vicodin ES", combination drugs containing hydrocodone 5,  
4 7.5 or 10 mg and APAP, are Schedule III controlled substances as designated by Health & Saf.  
5 Code section 11056, subdivision (e)(4), and are dangerous drugs within the meaning of Bus. &  
6 Prof. Code section 4022 in that they are available by prescription only.

### 7 FACTUAL BACKGROUND

8 46. From approximately July 1, 2002, through September 29, 2003,  
9 Respondent was the Pharmacist-In-Charge of Gold River Pharmacy, Inc. ("GRP") located in  
10 Sacramento, California. On August 19, 2003, Respondent reportedly came to GRP and opened  
11 the safe while the pharmacy was closed for lunch (Respondent was on vacation at that time). The  
12 operations manager of the pharmacy became suspicious of Respondent's actions, audited the  
13 Schedule II controlled substances, and found various discrepancies. On August 21, 2003, the  
14 operations manager contacted the Board and the Drug Enforcement Agency - Sacramento  
15 Division Office (hereinafter "DEA").

16 47. An inspector with the Board and a Diversion Investigator from DEA  
17 conducted a controlled substances audit at GRP and determined that numerous Schedule II, III  
18 and IV controlled substances and various dangerous drugs were unaccounted for, as more  
19 particularly set forth in paragraph 48 below.

20 48. On September 23, 2003, the Board's inspector conducted an inspection of  
21 the pharmacy and interviewed various staff along with the representative from DEA. The  
22 Board's inspector determined that Respondent, as Pharmacist-In-Charge of GRP, violated certain  
23 state laws and regulations governing pharmacy and controlled substances/dangerous drugs as set  
24 forth below.

25 49. On December 19, 2003, Respondent was interviewed by the Board's  
26 inspector and the representative from DEA. Respondent admitted, among other things, that he  
27 provided unauthorized refills of various prescription medication to Sandee Garcia, a "long-time  
28 family friend", and received approximately \$25.00 for each bottle of drugs. Respondent took 20



1 to 30 tablets at a time and placed them into an unlabeled prescription bottle. Respondent  
2 provided a written declaration following his interview wherein he also admitted that he had  
3 dispensed prescription medication without a valid prescription to Ms. Garcia and his own  
4 daughter, Andrea Lewis, and had stolen hundreds of units of controlled substances and dangerous  
5 drugs while employed at Price Less Drugs and GRP.

6 50. On March 10, 2004, the California Bureau of Narcotic Enforcement -  
7 Sacramento Regional Office (BNE-SRO) initiated a joint investigation pursuant to a request for  
8 investigative assistance from DEA. The investigations disclosed that Respondent, while  
9 employed as a pharmacist, diverted Schedule III and IV controlled substances in violation of  
10 Health & Saf. Code sections 11352 and 11173. On April 7, 2004, an arrest warrant was served  
11 on Respondent, resulting in Respondent's conviction on August 10, 2002, for obtaining a  
12 controlled substance by fraud, deceit and misrepresentation, a felony.

13 **FIRST CAUSE FOR DISCIPLINE**

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

15 51. Respondent's pharmacist license is subject to disciplinary action pursuant to  
16 Bus. & Prof. Code section 4301, subdivision (o), on the grounds of unprofessional conduct. In  
17 and between October 2002, and August 2003, while designated and employed as the pharmacist-  
18 in-charge at Gold River Pharmacy located in Sacramento, California, Respondent violated or  
19 attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired  
20 to violate, the following state laws and regulations governing pharmacy, including regulations  
21 established by the Board:

22 **Bus. & Prof. Code section 4081, subdivision (a)**

23 **Regulation 1718:**

24 a. Respondent failed to maintain records of acquisition and disposition  
25 (hereinafter "the records") of Schedule II, III and IV controlled substances as follows:

26 1. Respondent failed to account in the records for the acquisition  
27 overages (acquisitions were greater than dispositions) of Schedule II controlled  
28 substances including dilaudid 4 mg tablets, dexedrine 15 mg tablets, Oramorph

1 100 mg tablets, methadone 10 mg tablets, Ritalin 5 mg tablets, oxyContin 20 mg  
2 tablets, Concerta 18 mg tablets, MS Contin 15 mg tablets, Oramorph 60 mg  
3 tablets, Ritalin 15 mg tablets, Concerta 36 mg tablets, Adderall 20 mg tablets,  
4 MS Contin 60 mg tablets, Percocet 10/325 mg tablets, Dilaudid 2 mg tablets  
5 and/or oxycodone 5 mg tablets.

6 2. Respondent failed to account in the records for the acquisition  
7 overages of Schedule III and IV controlled substances including alprazolam 0.25  
8 mg tablets, clonazepam 1 mg tablets, and/or Darvocet-N 100 tablets.

9 3. Respondent failed to account in the records for the acquisition  
10 shortages (dispositions were greater than acquisitions) of Schedule II controlled  
11 substances including oxyContin 40 mg tablets, Percocet 7.5/325 mg tablets,  
12 Percodan tablets, MS Contin 30 mg tablets, Ritalin 10 mg tablets, Percocet 5/325  
13 mg tablets, Oramorph 15 mg tablets, Oramorph 30 mg tablets, Duragesic 25 mcg  
14 patches, and/or Duragesic 75 mcg patches.

15 4. Respondent failed to account in the records for the acquisition  
16 shortages of Schedule III and IV controlled substances including diazepam 10 mg  
17 tablets, Vicodin ES tablets and/or Norco 10/325 tablets.

18 **Regulation 1714, subdivision (d):**

19 b. Respondent failed to ensure that drugs were safely and properly maintained  
20 and secured by virtue of his failure to account for the acquisition overages of the Schedule II, III  
21 and IV controlled substances identified in subparagraph (a) above.

22 **Bus. & Prof. Code section 4125**

23 **Regulation 1711:**

24 c. Respondent failed to develop a quality assurance program for medication  
25 errors or have available for review written policies and procedures for same.

26 **Regulation 1793.7:**

27 d. Respondent failed to develop, or have available for review, a job  
28 description and written policies and procedures for pharmacy technicians.

1                    **Bus. & Prof. Code section 4077, subdivision (a):**

2                    e.        Respondent failed to ensure that prescriptions were dispensed in correctly  
3 labeled containers as follows: Blister packs were prepared and dispensed every week  
4 (approximately 200 a day), containing a 7-day supply of drugs. The labels on the blister packs  
5 stated the billing date, as opposed to the actual fill or dispensing date, and stated a 30-day supply  
6 rather than the actual 7-day quantity.

7                    **SECOND CAUSE FOR DISCIPLINE**

8                    **(Violation of State Laws Regulating Controlled Substances/Dangerous Drugs)**

9                    52.        Respondent's pharmacist license is subject to disciplinary action pursuant to  
10 Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct.  
11 Respondent violated the following statutes of this state regulating controlled substances and  
12 dangerous drugs:

13                    a.        In and between October 2002, and August 2003, while designated and  
14 employed as the pharmacist-in-charge at Gold River Pharmacy located in Sacramento, California,  
15 Respondent violated Health & Saf. Code section 11200, subdivision (b), by refilling  
16 prescriptions for various patients in amounts exceeding a 120-day supply including prescription  
17 number 148235, alprazolam 1 mg 90 tablets (a Schedule IV controlled substance), for patient  
18 A.H. Prescription number 148235 was filled and refilled a total of 6 times for a 180-day supply.

19                    b.        On and between August 30, 2001, and August 15, 2003, Respondent  
20 unlawfully transported, sold, furnished, administered and/or gave away unknown quantities of  
21 hydrocodone, a controlled substance, to Sandee Garcia, in violation of Health & Saf. Code  
22 section 11352, subdivision (a).

23                    c.        On and between August 30, 2001, and August 15, 2003, Respondent  
24 possessed unknown quantities of hydrocodone, a controlled substance, without lawful  
25 prescriptions for the medication from a physician, dentist, podiatrist, optometrist, or veterinarian,  
26 in violation of Bus. & Prof. Code section 4060 and Health & Saf. Code section 11350,  
27 subdivision (a).

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 53. Respondent's pharmacist license is subject to disciplinary action pursuant to  
4 Bus. & Prof. Code section 4301, subdivision (f), on the grounds of unprofessional conduct.

5 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as  
6 follows:

7 a. In and between 1998 and 2001, while licensed and employed as a  
8 pharmacist at Price Less Drugs in Rancho Cordova, California, Respondent, by own his  
9 admission, stole 300 to 500 diazepam 10 mg tablets, 100 to 200 Norco 10/32 tablets, and 100 to  
10 200 Vicodin ES, controlled substances, belonging to the pharmacy.

11 b. In and between August 2001, and August 2003, while employed as a  
12 pharmacist and/or designated as the pharmacist-in-charge at Gold River Pharmacy in  
13 Sacramento, California, Respondent, by his own admission, stole 100 to 150 alprazolam 0.25 mg  
14 tablets, 100 clonazepam 1 mg tablets, 100 to 150 Darvocet-N 100 tablets, 500 diazepam 10 mg  
15 tablets, 100 to 150 Fioricet tablets, 200 Norco 10/325 tablets, and 120 to 150 Pepcid 40 mg  
16 tablets, controlled substances and dangerous drugs, belonging to the pharmacy.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Furnishing Dangerous Drugs Without a Prescription)**

19 54. Respondent's pharmacist license is subject to disciplinary action pursuant to  
20 Bus. & Prof. Code section 4301, subdivision (o), on the grounds of unprofessional conduct. In  
21 and between 1998 and August 2003, Respondent violated or attempted to violate, directly or  
22 indirectly, or assisted in or abetted the violation of, or conspired to violate, Bus. & Prof. Code  
23 section 4059, subdivision (a), by furnishing dangerous drugs without a lawful prescription from a  
24 physician, dentist, podiatrist, optometrist, or veterinarian, as follows:

25 a. Respondent, by his own admission, dispensed Darvocet, Fioricet,  
26 clindamycin and ibuprofen, dangerous drugs, to his daughter, Andrea Lewis, without a valid  
27 prescription (or authorized refill) from a physician, dentist, podiatrist, optometrist, or  
28 veterinarian.

1 b. Respondent, by his own admission, dispensed Norco, Vicodin ES,  
2 diazepam, Darvocet, alprazolam, clonazepam and hydrocodone, dangerous drugs, to his friend,  
3 Sandra Garcia, without a valid prescription (or authorized refill) from a physician, dentist,  
4 podiatrist, optometrist, or veterinarian.

### 5 **FIFTH CAUSE FOR DISCIPLINE**

#### 6 **(Criminal Conviction)**

7 55. Respondent's pharmacist license is subject to disciplinary action pursuant to  
8 Bus. & Prof. Code section 4301, subdivision (1), on the grounds of unprofessional conduct. On  
9 or about August 10, 2004, Respondent was convicted by the court on his plea of nolo contendere  
10 to one (1) felony count in violation of Health & Saf. Code section 11173, subdivision (a)  
11 (obtaining a controlled substance by fraud, deceit and misrepresentation), in the criminal  
12 proceeding titled *People v. David Charles Lewis* (Sacramento Sup. Ct., 2004, No. 04F03379), a  
13 crime substantially related to the qualifications, functions, and duties of a licensed pharmacist.  
14 Respondent was also charged with one (1) felony count in violation of Health & Saf. Code  
15 section 11352, subdivision (a) (transportation, import, sale, etc., of controlled substances), but  
16 that charge was dismissed in view of Respondent's plea as set forth above.

17 56. The circumstances of the crime are that on and between August 30, 2001,  
18 and August 15, 2003, Respondent unlawfully obtained and attempted to obtain hydrocodone, a  
19 controlled substance, and procured and attempted to procure the administration of, and  
20 prescription for the controlled substance, by fraud, deceit and misrepresentation.

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1 PRAYER


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

4 1. Revoking or suspending Pharmacist License Number RPH 30329, issued to  
5 David Charles Lewis, II;

6 2. Ordering David Charles Lewis, II, to pay the Board of Pharmacy the  
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
8 Professions Code section 125.3; and

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

10 DATED: 1/3/05

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13 PATRICIA F. HARRIS  
14 Executive Officer  
15 Board of Pharmacy  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant  
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