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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2831

12 DAVID IAN MAC MILLAN
13 21592 High Country
Trabuco Canyon, CA 92679-3470

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14
15 Original Pharmacist License No. 39593
16 Respondent.

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

20 PARTIES

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

25 2. Respondent David Ian Mac Millan, (Respondent) is representing himself in
26 this proceeding and has chosen not to exercise his right to be represented by counsel.

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1 2. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**

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

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

15 3. **Random Drug Screening.** Respondent, at his own expense, shall participate
16 in random testing, including but not limited to biological fluid testing (urine, blood),
17 breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The
18 length of time shall be for the entire probation period and the frequency of testing will be
19 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
20 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
21 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
22 directed shall constitute a violation of probation. Any confirmed positive drug test shall result in
23 the immediate suspension of practice by Respondent. Respondent may not resume the practice
24 of pharmacy until notified by the Board in writing.

25 4. **Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain
26 from the possession or use of alcohol, controlled substances, dangerous drugs and their
27 associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner
28 as part of a documented medical treatment. Upon request of the Board, Respondent shall provide

1 documentation from the licensed practitioner that the prescription was legitimately issued and is
2 a necessary part of the treatment of the Respondent.

3 5. **Supervised Practice.** Respondent shall practice only under the supervision
4 of a pharmacist not on probation with the Board and as directed by the Pharmacists Recovery
5 Program.

6 6. **Restricted Practice.** Respondent's practice of pharmacy shall be restricted
7 as determined by the Pharmacy Recovery Program. Respondent shall submit proof satisfactory
8 to the Board of compliance with this term of probation.

9 7. **No Ownership of Premises.** Respondent shall not own, have any legal or
10 beneficial interest in, or serve as a manager, administrator, member, officer, director, associate,
11 or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by
12 the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed
13 by the Board within 90 days following the effective date of this decision and shall immediately
14 thereafter provide written proof thereof to the Board.

15 8. **Obey All Laws.** Respondent shall obey all state and federal laws and
16 regulations substantially related to or governing the practice of pharmacy.

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

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

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

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

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

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

17 13. **Notice to Employers.** Respondent shall notify all present and
18 prospective employers of the decision in case number 2831 and the terms, conditions and
19 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
20 this decision, and within 15 days of Respondent undertaking new employment, Respondent
21 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
22 writing acknowledging the employer has read the decision in case number 2831.

23 If Respondent works for or is employed by or through a pharmacy employment
24 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
25 every pharmacy of the and terms conditions of the decision in case number 2831 in advance of
26 Respondent commencing work at each pharmacy.

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

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

9 **15. Reimbursement of Board Costs.** Respondent shall pay to the Board its
10 costs of investigation and prosecution in the amount of \$6,543.75. Respondent shall make
11 said payments quarterly.

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

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

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

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

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

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

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

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

13 **20. Tolling of Probation.** Respondent shall work at least forty (40) hours in
14 each calendar month as a pharmacist and at least an average of 80 hours per month in any six
15 consecutive months. Failure to do so will be a violation of probation. Respondent must notify
16 the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption
17 of the practice of pharmacy. Such periods of time shall not apply to the reduction of the
18 probation period. It is a violation of probation for Respondent's probation to remain tolled
19 pursuant to the provisions of this condition for a period exceeding three years. If Respondent
20 has not complied with this condition during the probationary term, and Respondent has
21 presented sufficient documentation of his good faith efforts to comply with this condition, and
22 if no other conditions have been violated, the Board, in its discretion, may grant an extension
23 of Respondent's probation period up to one year without further hearing in order to comply
24 with this condition.,

25 "Cessation of practice" means any period of time exceeding 30 days in which
26 Respondent is not engaged in the practice of pharmacy as defined in Section
27 4052 of the Business and Professions Code.

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1 intelligently, and agree to be bound by the Decision and Order of the California Board of
2 Pharmacy.

3 DATED: 7-4-05.

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5 
6 DAVID IAN MACMILLAN
7 Respondent

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9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby
11 respectfully submitted for consideration by the California Board of Pharmacy..

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13 DATED: July 18, 2005

14 BILL LOCKYER, Attorney General
15 of the State of California

16 
17 SHERRY L. LEDAKIS
18 Deputy Attorney General

19 Attorneys for Complainant

20 DOJ Matter ID: SD2004801485
21 70027894.wpd

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

In the Matter of the Accusation Against:

DAVID IAN MAC MILLAN

21592 High Country
Trabuco Canyon, CA 92679-3470

Original Pharmacist License No. 39593

Respondent.

Case No. 2831

OAH No.

DECISION AND ORDER

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

This Decision shall become effective on September 16, 2005.

It is so ORDERED August 17, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2831

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY LEDAKIS, State Bar No. 131767
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
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12 In the Matter of the Accusation Against:
13 DAVID IAN MAC MILLAN
21592 High Country
14 Trabuco Canyon, CA 92679-3470
15 Original Pharmacist License No. 39593
16 Respondent.

Case No. 2831

A C C U S A T I O N

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18 Complainant alleges:

19 PARTIES

- 20 1. Patricia F. Harris (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about August 29, 1985, the Board of Pharmacy issued Original
23 Pharmacist License Number 39593 to David Ian Mac Millan (Respondent). The Original
24 Pharmacist License is in full force and effect and will expire on December 31, 2006, unless
25 renewed.

26 JURISDICTION

- 27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws.

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A. Section 4301 of the Business and Professions Code provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

...

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

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

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

...

B. Section 4060 of the Business and Professions Code provides in part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1.

C. Health and Safety Code Section 11350(a) provides:

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.

D. Section 11158 of the Health and Safety Code provides in part:

(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter.

(b) A practitioner specified in Section 11150 may dispense directly to an ultimate user a controlled substance classified in Schedule II in an amount not to exceed a 72-hour supply for the patient in accordance with directions for use given by the dispensing practitioner only where the patient is not expected to require any additional amount of the controlled substance beyond the 72 hours.

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E. Section 11170 of the Health and Safety Code provides in part:

No person shall prescribe, administer, or furnish a controlled substance for himself.

F. Section 11173 of the Health and Safety Code provides in part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

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

CONTROLLED SUBSTANCES

5. Oxycontin is the brand name for Oxycodone, a scheduled II controlled substance under Health and Safety Code section 11055(b)(1)(N). Oxycontin/Oxycodone is a dangerous drug per Business and Professions Code section 4022, is available only by prescription and is indicated for severe pain.

6. Ultram is the brand name for Tramadol. It is a dangerous drug per Business and Professions Code section 4022, is available only by prescription and is indicated for moderate pain.

FACTS

7. Respondent worked as a pharmacist at Chapman Medical Center from February 14, 2001, until he was terminated on March 30, 2004.

8. On April 13, 2004, the Board received a letter from Pharmacist-in-Charge, Mark Chew, Pharm.D., at Chapman Medical Center Pharmacy which included a DEA-106 Loss of Controlled Substance Form. Mr. Chew informed the Board that the pharmacy sustained numerous losses of Oxycontin, a scheduled II controlled substance, and that respondent was involved in all of the losses.

1 9. On February 22, 2004, a staff pharmacist at Chapman performed a random
2 audit of Oxycontin 10 mg. This audit indicated that 15 tablets of Oxycontin 10 mg. were signed
3 out of the Medical-Surgical Unit (MS Unit) to be returned to the pharmacy, however, the
4 pharmacy records indicated only 5 tablets of Oxycontin, 10 mg. were returned to the pharmacy.

5 10. The staff pharmacist informed Mr. Chew of his discovery and Mr. Chew
6 initiated an investigation.

7 11. Mr. Chew's investigation involved daily counts of controlled substances to
8 detect thefts. It was discovered that discrepancies in the amount of Tramadol in stock occurred
9 while respondent was on duty.

10 12. On or about December 22, 2003, staff pharmacist Le noted approximately
11 100 tablets of Tramadol 50 mg. in the pharmacy stock. The following day, Ms. Le saw only 10
12 tablets of Tramadol 50 mg. left. She notified Mr. Chew.

13 13. On or about December 23, 2003, Mr. Chew saw 100 tablets of Tramadol 50
14 mg. arrive from a pharmaceutical company. Mr. Chew questioned the pharmacy technician who
15 ordered the Tramadol.

16 14. The pharmacy technician ordered the Tramadol because respondent told him
17 to order it, because respondent said "we had a couple (of) patients on it." Mr. Chew took
18 respondent to Human Resources for questioning.

19 15. On December 23, 2003, respondent was confronted by Mr. Chew and
20 Gretchen Lindeman, of Human Resources. Respondent denied any knowledge of the missing
21 Tramadol, but admitted asking the pharmacy technician to order it, because, he thought he had
22 some patients on it, but he may have been mistaken.

23 16. Mr. Chew and Ms. Lindeman offered respondent help from employee
24 assistance which respondent refused.

25 17. Thereafter, Mr. Chew increased daily counts of Tramadol 50 mg. as well as
26 all other controlled substances. The counts routinely came up correct until Oxycontin losses
27 were discovered.

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1 18. An in-house audit was conducted for Oxycontin for the previous six months.
2 The results of this audit showed: On October 5, 2003, the Perpetual Inventory for Oxycontin 10
3 mg. states 30 tablets were sent to the MS Unit. Respondent signed as the dispensing pharmacist.
4 The controlled substance record for the MS Unit shows only 20 tablets of Oxycontin 10 mg.
5 actually arrived at the MS Unit. Further, the Pharmacy Narcotic Drug Receipt Log also shows
6 only 20 tablets of Oxycontin 10 mg. was received by the MS Unit.

7 19. On October 18, 2003, the Perpetual Inventory for Oxycontin 10 mg. states
8 that 10 tablets were sent to the Intensive Care Unit (ICU). Respondent signed as the dispensing
9 pharmacist. The Controlled Substance Record for the ICU shows no quantity of Oxycontin 10
10 mg. as being received in the ICU. The pharmacy Narcotic Drug Receipt Log confirms no
11 Oxycontin 10 mg. had been received in the ICU.

12 20. On November 16, 2003, the Controlled Substance Record for the ICU
13 indicates that 10 tablets of Oxycontin 20 mg. were removed from stock to be returned to the
14 pharmacy. The Perpetual Inventory Record for Oxycontin 20 mg. shows only 6 tablets were
15 returned to the pharmacy stock. Respondent's signature indicates he was the pharmacist
16 returning the medication to pharmacy stock.

17 21. On November 26, 2003, the Controlled Substance Record for the MS Unit
18 indicates 6 tablets of Oxycontin 20 mg. were removed from stock by respondent. The Perpetual
19 Inventory shows only 4 tablets of Oxycontin 20 mg. were returned from the MS Unit to the
20 pharmacy. On that same day, the Controlled Substance Record for the MS Unit indicates 20
21 tablets of Oxycontin 40 mg. were removed from stock by respondent. The Perpetual Inventory
22 shows only 17 tablets of Oxycontin 40 mg. were returned from the MS Unit to the pharmacy.
23 Respondent signed as the pharmacist receiving the medication.

24 22. On February 22, 2004, the Controlled Substance Record for the Senior
25 Mental Health Unit (SMH Unit) indicates that 15 tablets of Oxycontin 10 mg. were removed
26 from stock by respondent. The Perpetual Inventory shows only 5 tablets of Oxycontin 10 mg.
27 being returned from the SMH Unit to the pharmacy, and respondent signed as being the person
28 returning the medication to pharmacy stock.

1 and Safety Code section 11055(b)(1)(N), to himself without a prescription as set forth above in
2 paragraphs 7 through 25.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)

5 29. Respondent David Mac Millan, is subject to disciplinary action under
6 section 4301(f) of the Business and Professions Code, and section 11173(a) of the Health and
7 Safety Code, in that he administered Oxycontin, a scheduled II controlled substance under Health
8 and Safety Code section 11055(b)(1)(N), to himself without a prescription by means of fraud,
9 deceit or subterfuge as set forth above in paragraphs 7 through 25.

10 FIFTH CAUSE FOR DISCIPLINE

11 (Falsification of Documents)

12 30. Respondent David Mac Millan, is subject to disciplinary action under
13 section 4301(g) of the Business and Professions Code, and section 11173(b) of the Health and
14 Safety Code, in that he knowingly falsely signed inventory and controlled substance records in
15 order to conceal his numerous thefts of Oxycontin as set forth above in paragraphs 7 through 25.

16 PRAYER

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

- 19 1. Revoking or suspending Original Pharmacist License Number 39593, issued
20 to David Ian Mac Millan;
- 21 2. Ordering David Ian Mac Millan to pay the Board of Pharmacy the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions
23 Code section 125.3;

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

DATED: 5/31/05

P. F. Harris

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

DOJ docket number