

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

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

Case No. 3651

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

Wholesaler Permit No. WLS 3575,

and

**THERESA A. MUSGRAVE**  
4340 Old Santa Fe Rd.  
San Luis Obispo, CA 93401

Designated Representative No. EXC 16709  
Respondent.

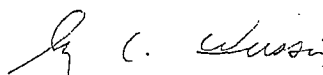
**DECISION AND ORDER**

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

This decision shall become effective on March 28, 2011.

It is so ORDERED on February 25, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

STANLEY C. WEISSER  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*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**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER(S)**

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 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation and  
24 Petition to Revoke Probation filed against CT International and Theresa A. Musgrave.

25 PARTIES

26 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought  
27 this action solely in her official capacity and is represented in this matter by Edmund G. Brown  
28 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

1            2.    CT International and Theresa A. Musgrave (Respondents) are represented in this  
2 proceeding by attorney Timothy J. Aspinwall, Nossaman, LLP, 915 L Street, Suite 1000,  
3 Sacramento, CA 95814 (telephone (916) 442-8888).

4            3.    On or about October 21, 1999, the Board of Pharmacy issued Wholesaler License No.  
5 WLS 3575 to CT International (Respondent CT). The Wholesaler License was in effect at all  
6 times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 3651  
7 and will expire on October 1, 2011, unless renewed.

8            4.    On or about August 28, 2002, the Board of Pharmacy issued Designated  
9 Representative License No. EXC 16709 to Theresa A. Musgrave (Respondent Musgrave). The  
10 Designated Representative License was in effect at all times relevant to the charges brought in  
11 Accusation and Petition to Revoke Probation No. 3651 and will expire on August 1, 2011, unless  
12 renewed. Since on or about December 15, 2006, Respondent Musgrave has served as Designated  
13 Representative in Charge for Respondent CT.

#### 14    JURISDICTION

15            5.    Accusation and Petition to Revoke Probation No. 3651 was filed before the Board of  
16 Pharmacy (Board), Department of Consumer Affairs, and is currently pending against each of the  
17 Respondents. The Accusation and Petition to Revoke Probation and all other statutorily required  
18 documents were properly served on the Respondents on February 19, 2010.<sup>1</sup> Respondents timely  
19 filed a Notice of Defense contesting the pleading. A copy of Accusation and Petition to Revoke  
20 Probation No. 3651 is attached as exhibit A and incorporated herein by reference.

#### 21    ADVISEMENT AND WAIVERS

22            6.    Respondents have carefully read, fully discussed with counsel, and understand the  
23 charges and allegations in Accusation and Petition to Revoke Probation No. 3651. Respondents  
24 have also carefully read, fully discussed with counsel, and understand the effects of this  
25 Stipulated Settlement and Disciplinary Order.

26            <sup>1</sup> The pleading served February 19, 2010 mistakenly bore case number 2761. The Notice  
27 of Defense returned by Respondents also bore case number 2761. A corrected pleading with case  
28 number 3651 was provided to Respondents on or about March 3, 2010. The previously-returned  
Notice of Defense was deemed to apply to the renumbered but otherwise identical pleading.

1           7. Respondents are fully aware of their legal rights in this matter, including the right to a  
2 hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the  
3 right to be represented by counsel at their own expense; the right to confront and cross-examine  
4 the witnesses against them; the right to present evidence and to testify on their own behalf; the  
5 right to the issuance of subpoenas to compel the attendance of witnesses and the production of  
6 documents; the right to reconsideration and court review of an adverse decision; and all other  
7 rights accorded by the California Administrative Procedure Act and other applicable laws.

8           8. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
9 every right set forth above.

10   CULPABILITY

11           9. Respondents admit that at hearing Complainant could establish a factual basis for the  
12 charges and allegations in Accusation and Petition to Revoke Probation No. 3651, and that those  
13 charges and allegations are cause for discipline and/or for revocation of probation. Respondents  
14 hereby give up their right(s) to contest those charges and allegations.

15           10. Respondents agree that their respective licenses are subject to discipline and agree to  
16 be bound by the Board's imposition of discipline as set forth in the Disciplinary Order(s) below.

17   RESERVATION

18           11. Admissions made by Respondents herein are only for the purposes of this proceeding,  
19 or any other proceedings in which the Board of Pharmacy or other professional licensing agency  
20 is involved, and shall not be admissible in any other criminal or civil proceeding.

21   MITIGATION

22           12. Respondents have been cooperative and forthcoming in these proceedings, and have  
23 accepted an early settlement including a period of additional probation in order to demonstrate to  
24 the Board of Pharmacy their continuing willingness to comply with applicable law. Respondents  
25 assert that the acts leading to Accusation and Petition to Revoke Probation No. 3651 were done in  
26 good faith, in conjunction with the pharmacist consultant approved by the Board of Pharmacy to  
27 monitor Respondent CT's prior probation, and with no intention to violate the law. While noting  
28 that a violation occurred, Complainant accepts Respondents' representations of good faith.

CONTINGENCY

1  
2       13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents  
3 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and settlement, without notice to  
5 or participation by Respondents or counsel. By signing the stipulation, Respondents understand  
6 and agree that they may not withdraw this agreement or seek to rescind the stipulation prior to the  
7 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its  
8 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
9 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
10 and the Board shall not be disqualified from further action by having considered this matter.

11       14. The parties understand and agree that facsimile copies of this Stipulated Settlement  
12 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
13 effect as the originals.

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

20       16. In consideration of the foregoing, the parties agree that the Board may, without  
21 further notice or formal proceeding, issue and enter the following Disciplinary Order(s):

DISCIPLINARY ORDER AS TO RESPONDENT CT

22  
23       In its prior disciplinary action titled "In the Matter of the Accusation Against Bandana  
24 Trading Inc., et al.," Case No. 2761, the Board's prior Decision and Order, effective February 19,  
25 2007, revoked Wholesaler License No. 3575, issued to Respondent CT, but stayed the revocation  
26 and placed Respondent CT on probation for three (3) years with certain terms and conditions. If  
27 Respondent CT had been compliant therewith, that probation would have terminated on or about  
28 February 19, 2010. That term of probation is now to be extended for two (2) years from the new

1 effective date of this Decision and Order. The original termination date is now to be replaced by  
2 a date two (2) years from the effective date of this Decision and Order. The original terms and  
3 conditions of probation are to be replaced by the terms and conditions stated in the following.

4 IT IS HEREBY ORDERED that Wholesaler License No. WLS 3575, issued to Respondent  
5 CT International (Respondent CT), is revoked. However, revocation is stayed and Respondent  
6 CT is placed on probation for two (2) years on the following terms and conditions.

7 **1. Obey All Laws**

8 Respondent shall obey all state and federal laws and regulations. Respondent shall report  
9 any of the following occurrences to the board, in writing, within seventy-two (72) hours:

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

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

22 **2. Report to the Board**

23 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
24 designee. The report shall be made either in person or in writing, as directed. Among other  
25 requirements, respondent shall state in each report under penalty of perjury whether there has  
26 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
27 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
28 in submission of reports as directed may be added to the total period of probation. Moreover, if  
the final probation report is not made as directed, probation shall be automatically extended until  
such time as the final report is made and accepted by the board.

1           **3. Interview with the Board**

2           Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
3 with the board or its designee, upon request at such intervals and locations as are determined by  
4 the board or its designee. Failure to appear for any scheduled interview without prior notification  
5 to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its  
6 designee during the period of probation, shall be considered a violation of probation.

7           **4. Cooperate with Board Staff**

8           Respondent shall cooperate with the board's inspection program and with the board's  
9 monitoring and investigation of respondent's compliance with the terms and conditions of their  
10 probation. Failure to cooperate shall be considered a violation of probation.

11           **5. Reimbursement of Board Costs**

12           Pursuant to the "Reimbursement of Board Costs" term and condition of probation in case  
13 number 2761, Respondent CT previously made full payment of costs of investigation and  
14 prosecution pursuant to the existing probation in case number 2761.

15           The board has incurred additional costs in relation to case number 3651. Respondent CT  
16 and Respondent Musgrave shall be jointly and severally liable for payment to the board of its  
17 costs in case number 3651. Respondent CT and Respondent Musgrave shall pay to the board  
18 total costs of investigation and prosecution in case number 3651 of \$11,500.00.

19           Absent prior written approval by the board or its designee, neither Respondent CT nor  
20 Respondent Musgrave may successfully complete probation until this amount is paid in full.  
21 Each respondent shall be responsible for payment of the full amount and neither may claim to  
22 owe only a portion or a share thereof. Respondents shall be permitted to pay these costs in a  
23 payment plan approved by the board or its designee, so long as full payment is completed no later  
24 than twenty-one (21) months after the effective date of this decision. There shall be no deviation  
25 from this schedule absent prior written approval by the board or its designee. Failure to pay costs  
26 by the deadline(s) as directed shall be considered a violation of probation.

27           The filing of bankruptcy by either or both respondents shall not relieve either respondent of  
28 its or her responsibility to reimburse the board its costs of investigation and prosecution.

1           **6. Probation Monitoring Costs**

2           Respondent shall pay any costs associated with probation monitoring as determined by the  
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
5 be considered a violation of probation.

6           **7. Status of License**

7           Respondent shall, at all times while on probation, maintain an active, current wholesaler  
8 license with the board, including any period during which suspension or probation is tolled.  
9 Failure to maintain an active, current license shall be considered a violation of probation.

10          If respondent's wholesaler license expires or is cancelled by operation of law or otherwise at  
11 any time during the period of probation, including any extensions thereof due to tolling or  
12 otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and  
13 conditions of this probation not previously satisfied.

14          **8. License Surrender While on Probation/Suspension**

15          Following the effective date of this decision, should respondent cease practice due to  
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, it  
17 may tender its wholesaler license to the board for surrender. The board or its designee shall have  
18 the discretion whether to grant the request for surrender or take any other action it deems  
19 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
20 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
21 record of discipline and shall become a part of the respondent's license history with the board.

22          Upon acceptance of the surrender, respondent shall relinquish its wholesaler license to the  
23 board within ten (10) days of notification by the board that the surrender is accepted. Respondent  
24 may not reapply for any license, permit, or registration from the board for three (3) years from the  
25 effective date of the surrender. Respondent shall meet all requirements applicable to the license  
26 sought as of the date the application for that license is submitted to the board.

27           ///

28           ///



1           9.    **Violation of Probation**

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

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

14           10.   **Completion of Probation**

15           Upon written notice by the board indicating successful completion of probation,  
16 respondent's wholesaler license will be fully restored.

17           11.   **Independent Consultant**

18           Respondent shall retain an independent pharmacist at its own expense who shall be  
19 responsible for reviewing wholesale operations on a quarterly basis for compliance by respondent  
20 with state and federal laws and regulations governing wholesaling. The consultant shall be a  
21 pharmacist licensed by the board whose license is in good standing (e.g., current and active, not  
22 under suspension or on probation) with the board. The pharmacist consultant's name shall be  
23 submitted to the board for its prior approval within 30 days of the effective date of this decision.

24           12.   **Notice to Employees**

25           Respondent shall, upon or before the effective date of this decision, ensure that all  
26 employees involved in permit operations are made aware of all the terms and conditions of  
27 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
28 If the notice required by this provision is posted, it shall be posted in a prominent place and shall

1 remain posted throughout the probation period. Respondent shall ensure that any employees  
2 hired or used after the effective date of this decision are made aware of the terms and conditions  
3 of probation by posting a notice, circulating a notice, or both. Additionally, respondent shall  
4 submit written notification to the board, within fifteen (15) days of the effective date of this  
5 decision, that this term has been satisfied. Failure to submit such notification to the board shall be  
6 considered a violation of probation.

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

9 **13. Owners and Officers: Knowledge of the Law**

10 Respondent shall provide, within thirty (30) days after the effective date of this decision,  
11 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
12 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty  
13 of perjury that said individuals have read and are familiar with state and federal laws and  
14 regulations governing the practice of wholesaling. The failure to timely provide said statements  
15 under penalty of perjury shall be considered a violation of probation.

16 **14. Posted Notice of Probation**

17 Respondent shall prominently post a probation notice provided by the board in a place  
18 conspicuous and readable to the public. The notice shall remain posted during the entire period of  
19 probation. Respondent shall not, directly or indirectly, engage in any conduct or make any  
20 statement which is intended to mislead or is likely to have the effect of misleading any patient,  
21 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
22 of the licensed entity. Failure to post such notice shall be considered a violation of probation.

23 **15. Limitations on Purchase/Acquisition from Pharmacies**

24 During probation, respondent shall not purchase or otherwise acquire dangerous drugs from  
25 any pharmacy licensed by the board, unless such purchase/acquisition is specifically permitted by  
26 Business and Professions Code section 4126.5. No purchase/acquisition of dangerous drugs shall  
27 be permitted pursuant to the "temporary shortage" provision of section 4126.5, subdivision (a)(4),  
28 unless prior to the purchase/acquisition respondent possesses at least the following documents:

- 1 • Written correspondence from an individual authorized to bind the pharmacy or other  
2 dispenser ("recipient") to whom respondent will resell or otherwise transfer the  
3 purchased/acquired drug(s) to alleviate a temporary shortage, which specifies: the  
4 name(s) and dosage(s) of drug(s) needed to alleviate a temporary shortage; reason(s)  
5 for the shortage (e.g., the recipient's primary distributor does not have the drug(s), or  
6 a regional or national shortage); the quantity of drug(s) needed by the recipient; and  
7 a statement that failure to secure the drug(s) in the amount(s) specified may result in  
8 the denial of health care. Respondent may promulgate a form to assist the recipient  
9 in providing these four categories of information, and all such communications may  
10 be conducted by electronic mail (email), so long as: (a) no purchase or acquisition is  
11 initiated by respondent without a written communication from the recipient that by  
12 supplying these four categories of data demonstrates the existence of a temporary  
13 shortage that may result in denial of health care; and (b) any email correspondence  
14 identifies the name, title, and contact information for the recipient representative.

8 and at least one of the following two categories of documents:

- 9 • Documentation from FDA or ASHP demonstrating a current shortage of the drug(s)  
10 sought, in the applicable geographic region and in the dosage and quantity sought, at  
11 the time respondent initiates the transaction to purchase/acquire the drug; or  
12 • Documentation from the recipient's other distributor(s) showing lack of availability  
13 of the drug(s) (dosage and quantity) sought at the time of purchase/acquisition.

12 No purchase/acquisition of a dangerous drug shall be permitted pursuant to the "temporary  
13 shortage" provision of section 4126.5, subdivision (a)(4) where the drug(s) (dosage and quantity)  
14 purchased or acquired by respondent cannot be matched to a specific request by a recipient made  
15 prior to the purchase/acquisition. Respondent may purchase/acquire a lesser quantity than that  
16 sought by a recipient, but in no event may respondent purchase/acquire more than was requested.  
17 For example, if a recipient writes and signs correspondence stating there is a shortage of Drug A  
18 due to a regional shortage, and that 200 tablets of Drug A are necessary to avoid recipient's denial  
19 of health care, respondent may purchase/acquire up to 200 tablets of Drug A from a pharmacy.

20 Respondent shall retain the required documentation for no less than three (3) years from the  
21 date of the purchase/acquisition transaction, and shall make such documentation immediately  
22 available to the Board or its designee upon request, and during routine pharmacy inspections.

23 Purchase/acquisition of any dangerous drug from a pharmacy licensed by the board that is  
24 not specifically permitted by section 4126.5, including any purchase/acquisition pursuant to the  
25 "temporary shortage" authorization of section 4126.5, section (a)(4) for which respondent fails to  
26 first secure the documentation listed above, shall be considered a violation of probation.

27 Failure to make that documentation immediately available to the Board or its designee or to  
28 have that documentation available during inspection, shall be considered a violation of probation.

1           16.   **No New Ownership of Licensed Entity/Entities**

2           During probation, neither respondent, nor any owner of respondent or respondent's stock,  
3 nor any manager, administrator, member, officer, director, trustee, associate, or partner of or in  
4 respondent, shall acquire any new ownership, legal or beneficial interest nor serve as a manager,  
5 administrator, member, officer, director, trustee, associate, or partner of any additional business,  
6 firm, partnership, or corporation licensed by the board. If any such person currently owns or has  
7 any legal or beneficial interest in, or serves as a manager, administrator, member, officer,  
8 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently  
9 or hereinafter licensed by the board, such person may continue to serve in such capacity or hold  
10 that interest, but only to the extent of that position or interest as of the effective date of this  
11 decision. Violation of this restriction shall be considered a violation of probation.

12           Nothing in this paragraph 16 shall preclude the entity Healthquest, in which Michael Steven  
13 Kyle has an ownership interest, from acquiring an ownership interest in BK Pharmacy - Pismo,  
14 PHY 47165, and applying to the board for licensure as a closed door or retail pharmacy. By  
15 virtue of a loan made by Healthquest to BK Pharmacy - Pismo and/or its owner(s), on or about  
16 December 4, 2009 Healthquest acquired a beneficial interest in BK Pharmacy - Pismo.

17  
18  
19                           **DISCIPLINARY ORDER AS TO RESPONDENT MUSGRAVE**

20           IT IS HEREBY ORDERED that Designated Representative License No. EXC 16709,  
21 issued to Respondent Theresa A. Musgrave (Respondent Musgrave), is revoked. However,  
22 revocation is stayed and Respondent Musgrave is placed on probation for two (2) years on the  
23 following terms and conditions.

24           17.   **Obey All Laws**

25           Respondent shall obey all state and federal laws and regulations. Respondent shall report  
26 any of the following occurrences to the board, in writing, within seventy-two (72) hours:

- 27            an arrest or issuance of a criminal complaint for violation of any provision of the  
28           Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
              substances laws

- 1        an arrest or issuance of a criminal complaint for violation of any state or federal law
- 2        a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
- 3       criminal complaint, information or indictment
- 4        a conviction of any crime
- 5        discipline, citation, or other administrative action filed by any state or federal agency
- 6       which involves respondent's wholesaler license or which is related to the practice of
- pharmacy or the manufacturing, obtaining, handling or distribution or billing or
- charging for of any drug, device or controlled substance.

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

8       **18. Report to the Board**

9       Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
10      designee. The report shall be made either in person or in writing, as directed. Among other  
11      requirements, respondent shall state in each report under penalty of perjury whether there has  
12      been compliance with all the terms and conditions of probation. Failure to submit timely reports  
13      in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
14      in submission of reports as directed may be added to the total period of probation. Moreover, if  
15      the final probation report is not made as directed, probation shall be automatically extended until  
16      such time as the final report is made and accepted by the board.

17      **19. Interview with the Board**

18      Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
19      with the board or its designee, upon request at such intervals and locations as are determined by  
20      the board or its designee. Failure to appear for any scheduled interview without prior notification  
21      to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its  
22      designee during the period of probation, shall be considered a violation of probation.

23      **20. Cooperate with Board Staff**

24      Respondent shall cooperate with the board's inspection program and with the board's  
25      monitoring and investigation of respondent's compliance with the terms and conditions of their  
26      probation. Failure to cooperate shall be considered a violation of probation.

27      ///

28      ///

1           21.    **Notice to Employers**

2           During the period of probation, respondent shall notify all present and prospective  
3 employers of the decision in case number 3651 and the terms, conditions and restrictions imposed  
4 on respondent by the decision, as follows:

5           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
6 respondent undertaking any new employment, respondent shall cause her direct supervisor,  
7 designated representative-in-charge (including each new designated representative-in-charge  
8 employed during respondent's tenure of employment) and owner to report to the board in writing  
9 acknowledging that the listed individual(s) has/have read the decision in case number 3651 and  
10 terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her  
11 employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

12           If respondent works for or is employed by or through an employment service, respondent  
13 must notify her direct supervisor, designated representative-in-charge and owner at each entity  
14 licensed by the board of the terms and conditions of the decision in case number 3651 in advance  
15 of the respondent commencing work at each licensed entity. A record of this notification must be  
16 provided to the board upon request.

17           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
19 service, respondent shall cause her direct supervisor with the employment service to report to the  
20 board in writing acknowledging that he or she has read the decision in case number 3651 and the  
21 terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that  
22 her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23           Failure to timely notify present or prospective employer(s) or to cause such employer(s) to  
24 submit timely acknowledgements to the board shall be considered a violation of probation.

25           "Employment" within the meaning of this provision shall include any full-time,  
26 part-time, temporary or relief service or pharmacy management service as a  
27 designated representative or in any position for which a designated representative  
28 license is a requirement or criterion for employment, whether the respondent is  
considered an employee or independent contractor or volunteer.

///

1           **22. No Being Designated Representative-in-Charge**

2           During the period of probation, respondent shall not be the designated representative-in-  
3 charge of any entity licensed by the board other than Respondent CT, unless such employment by  
4 another entity has been approved in advance by the board or its designee. Assumption of any  
5 such unauthorized supervision responsibilities shall be considered a violation of probation.

6           **23. Reimbursement of Board Costs**

7           Respondent CT and Respondent Musgrave shall be jointly and severally liable for payment  
8 to the board of its costs in case number 3651. Respondent CT and Respondent Musgrave shall  
9 pay to the board total costs of investigation and prosecution in case number 3651 of \$11,500.00.

10          Absent prior written approval by the board or its designee, neither Respondent CT nor  
11 Respondent Musgrave may successfully complete probation until this amount is paid in full.

12          Each respondent shall be responsible for payment of the full amount and neither may claim to  
13 owe only a portion or a share thereof. Respondents shall be permitted to pay these costs in a  
14 payment plan approved by the board or its designee, so long as full payment is completed no later  
15 than twenty-one (21) months after the effective date of this decision. There shall be no deviation  
16 from this schedule absent prior written approval by the board or its designee. Failure to pay costs  
17 by the deadline(s) as directed shall be considered a violation of probation.

18          The filing of bankruptcy by either or both respondents shall not relieve either respondent of  
19 its or her responsibility to reimburse the board its costs of investigation and prosecution.

20           **24. Probation Monitoring Costs**

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

25           **25. Status of License**

26           Respondent shall, at all times while on probation, maintain an active, current designated  
27 representative license with the board, including any period during which suspension or probation  
28 is tolled. Failure to maintain an active, current license shall be deemed a violation of probation.

1 If respondent's designated representative license expires or is cancelled by operation of law  
2 or otherwise at any time during the period of probation, including any extensions thereof due to  
3 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all  
4 terms and conditions of this probation not previously satisfied.

5 **26. License Surrender While on Probation/Suspension**

6 Following the effective date of this decision, should respondent cease work due to  
7 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
8 respondent may tender her designated representative license to the board for surrender. The  
9 board or its designee shall have the discretion whether to grant the request for surrender or take  
10 any other action it deems appropriate. Upon formal acceptance of the surrender, respondent will  
11 no longer be subject to the terms and conditions of probation. This surrender constitutes a record  
12 of discipline and shall become a part of the respondent's license history with the board.

13 Upon acceptance of the surrender, respondent shall relinquish her designated representative  
14 license to the board within ten (10) days of notification by the board that surrender is accepted.  
15 Respondent may not reapply for any license, permit, or registration from the board for three (3)  
16 years from the effective date of the surrender. Respondent shall meet all requirements applicable  
17 to the license sought as of the date the application for that license is submitted to the board.

18 **27. Notification of Change in Employment, Name, Address or Phone**

19 Respondent shall notify the board in writing within ten (10) days of any change of  
20 employment. Said notification shall include the reasons for leaving and the address of the new  
21 employer, supervisor and owner and work schedule, if known. Respondent shall further notify  
22 the board in writing within ten (10) days of a change in name, residence address and mailing  
23 address, or phone number. Failure to timely notify the board of any change in employer(s),  
24 name(s), address(es), or phone number(s) shall be considered a violation of probation.

25 **28. Tolling of Probation**

26 Except during periods of suspension, respondent shall, at all times while on probation, be  
27 employed as a designated representative in California for a minimum of forty (40) hours per  
28 calendar month. Any month during which this minimum is not met shall toll the period of



1 probation, i.e., the period of probation shall be extended by one month for each month during  
2 which this minimum is not met. During any such period of tolling of probation, respondent must  
3 nonetheless comply with all terms and conditions of probation.

4 Should respondent, regardless of residency, for any reason (including vacation) cease  
5 working as a designated representative for a minimum of forty (40) hours in California,  
6 respondent must notify the board in writing within ten (10) days of cessation of work and must  
7 further notify the board in writing within ten (10) days of the resumption of work. Any failure to  
8 provide such notification(s) shall be considered a violation of probation.

9 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
10 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
11 exceeding thirty-six (36) months.

12 "Cessation of work" means any calendar month during which respondent is not working as  
13 a designated representative for at least forty (40) hours as a designated representative as defined  
14 by Business and Professions Code section 4053. "Resumption of work" means any calendar  
15 month during which respondent is working as a designated representative for at least forty (40)  
16 hours as a designated representative as defined by Business and Professions Code section 4053.

#### 15 29. Violation of Probation

16 If respondent has not complied with any term or condition of probation, the board shall  
17 have continuing jurisdiction over respondent, and probation shall automatically be extended until  
18 all terms and conditions have been satisfied or the board has taken other action as deemed  
19 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
20 to impose the penalty that was stayed.

21 If respondent violates probation in any respect, the board, after giving respondent notice  
22 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
23 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
24 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
25 a petition to revoke probation or an accusation is filed against respondent during probation, the  
26 board shall have continuing jurisdiction, and the period of probation shall be automatically  
27 extended, until the petition to revoke probation or accusation is heard and decided.

28 ///

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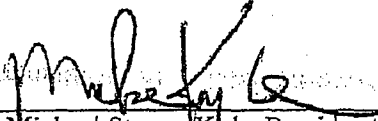
30. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's designated representative license will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Timothy J. Aspinwall. I understand the stipulation and the effect it will have on my Wholesaler License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/17/10

  
\_\_\_\_\_  
Michael Steven Kyle, President, for  
CT INTERNATIONAL  
Respondent

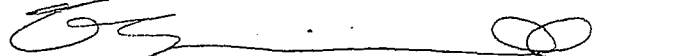
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Timothy J. Aspinwall. I understand the stipulation and the effect it will have on my Designated Representative License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/17/10

  
\_\_\_\_\_  
THERESA A. MUSGRAVE  
Respondent

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

DATED: 11/17/10

  
\_\_\_\_\_  
TIMOTHY J. ASPINWALL  
Nossaman, LLP  
Attorneys for Respondents

ENDORSEMENT

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

Dated: 11/23/2010

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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Exhibit A

Accusation and Petition to Revoke Probation No. 3651

---

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*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.



STATUTORY AND REGULATORY PROVISIONS

1  
2 9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
3 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
4 not be limited to, any of the following:

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

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

11 10. Section 4033 of the Code provides, in pertinent part, that the term “manufacturer”  
12 means and includes every individual or entity that prepares, derives, produces, compounds, or  
13 repackages any drug or device except a pharmacy that manufactures on the immediate premises  
14 where the drug or device is sold to the ultimate consumer.

15 11. Section 4160 of the Code provides, in pertinent part, that a wholesaler license shall be  
16 required for a person or entity to act as a wholesaler, that every wholesaler shall be supervised or  
17 managed by a Designated Representative in Charge, and that the Designated Representative in  
18 Charge shall be responsible for the wholesaler’s compliance with state and federal laws.

19 12. Health and Safety Code section 111615 provides, in pertinent part, that no individual  
20 or entity shall manufacture any drug or device in this state unless he or she has a valid license to  
21 do so issued by the California State Department of Health Services.

22 13. Health and Safety Code section 111655, in pertinent part, exempts from the licensing  
23 requirement of section 111615 pharmacies compliant with Pharmacy Law [Bus. & Prof. Code, §  
24 4000 et seq.] that are regularly engaged in dispensing prescription drugs and devices, and that do  
25 not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in  
26 the regular course of the pharmacy’s business of dispensing or selling drugs or devices at retail.

27 ///

28 ///

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 **Vitrase, 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.<sup>1</sup>: (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.

27  
28 <sup>1</sup> The full name of this pharmacy shall be provided to Respondents in discovery.

1 OTHER MATTERS – EXTENSION OF PROBATION

2 24. At all times after the effective date (February 21, 2007) of the Decision and Order  
3 imposing probation on Respondent CT's License, Term and Condition 9 of that Order required:

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

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

11 25. Pursuant to the operation of Term and Condition 9 of the probation order applicable  
12 to Respondent CT's License, probation is automatically extended by the filing hereof, and/or by  
13 Respondent's failure to comply with the terms and conditions of probation, until such time as this  
14 Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken  
15 other action as deemed appropriate to treat the failure to comply as a violation of probation.  
16

17 PRAYER

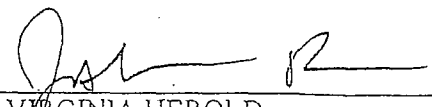
18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Board of Pharmacy issue a decision:

- 20 1. Revoking or suspending Wholesaler License No. WLS 3575, issued to CT  
21 International (Respondent CT);
- 22 2. Revoking the probation that was granted by the Board of Pharmacy in prior Case No.  
23 2761 and imposing the disciplinary order that was stayed, thereby revoking Wholesaler License  
24 No. WLS 3575, issued to CT International (Respondent CT);
- 25 3. Revoking or suspending Designated Representative License No. EXC 16709, issued  
26 to Theresa A. Musgrave (Respondent Musgrave);
- 27 4. Ordering Respondents to pay the Board the reasonable costs of the investigation and  
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: FEBRUARY 19, 2010

  
VIRGINIA HEROLD  
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  
6 Attorneys for Complainant

ORIGINAL

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. 2761  
OAH No. 2006070310

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

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER AS TO  
RESPONDENTS  
BANDANA TRADING INC.  
d.b.a. CORRECT TOUCH  
PHARMACY

13 Pharmacy Permit No. PHY 46141,

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

and  
d.b.a. CT INTERNATIONAL  
and  
MICHAEL STEPHEN KYLE

16 Pharmacist License No. RPH 25702,

17 BANDANA TRADING  
18 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

25  
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

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

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

13           3       On or about January 28, 2003, the Board issued Pharmacy Permit No.  
14 PHY 46141 to Bandana Trading Inc. d.b.a. Correct Touch Pharmacy (Respondent Correct  
15 Touch). The Pharmacy Permit was in full force and effect at all times relevant to the charges  
16 brought herein and will expire on January 1, 2007, unless renewed. Michael Stephen Kyle, also a  
17 named respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003.  
18 John Geradin Cole, RPH 25702, a named respondent herein, was the *Pharmacist-in-Charge* of  
19 Respondent Correct Touch from February 20, 2003 through October 31, 2003.

20           4       On or about October 21, 1999, the Board issued Wholesale Permit No.  
21 WLS 3575 to Bandana Trading d.b.a. CT International (Respondent CT International). The  
22 Wholesale Permit was in full force and effect at all times relevant to the charges brought herein  
23 and will expire on October 1, 2007, unless renewed. Michael Stephen Kyle, also a named  
24 respondent herein, was and is President of Bandana Trading Inc. since January 28, 2003, and is  
25 the Exemptee-in-Charge from October 21, 1999 through January 1, 2002, and now since October  
26 2, 2002.

27           5       On or about August 14, 1968, the Board issued Pharmacist License No.  
28 RPH 25702 to John Geradin Cole (Respondent Cole). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought herein and will expire on October 31, 2004,  
2 unless renewed. Respondent Cole was the *Pharmacist-in-Charge* of Respondent Correct Touch  
3 Pharmacy from February 20, 2003 through October 31, 2003.

4             6         On or about October 21, 1999, the Board issued Exemption Certificate No.  
5 EXC 15203 to Michael Stephen Kyle (Respondent Kyle) to oversee the operations of a wholesale  
6 distributor in California. The Exemption Certificate was in full force and effect at all times  
7 relevant to the charges brought herein and will expire on October 1, 2007, unless renewed.

#### 8   JURISDICTION

9             7         Accusation No. 2761 was filed before the Board of Pharmacy (Board),  
10 Department of Consumer Affairs, and is currently pending against Respondents. The Accusation  
11 and all other statutorily required documents were properly served to Respondents, and each of  
12 them, on December 2, 2004. Respondents, and each of them, timely filed the Notice(s) of  
13 Defense contesting the Accusation. A copy of Accusation No. 2761 is attached as Exhibit A and  
14 incorporated herein by reference.

#### 15   ADVISEMENT AND WAIVERS

16             8         Respondent Kyle, for himself and on behalf of Bandana Trading Inc.,  
17 d.b.a. Correct Touch Pharmacy, and Bandana Trading Inc. d.b.a. CT International, has carefully  
18 read, fully discussed with counsel, and understands the charges and allegations in Accusation No.  
19 2761. These Respondents have also carefully read, fully discussed with counsel, and understand  
20 the effects of this Stipulated Settlement and Disciplinary Order.

21             9         Respondents, and each of them, are fully aware of their legal rights in this  
22 matter, including the right to a hearing on the charges and allegations in the Accusation; the right  
23 to be represented by counsel at their own expense; the right to confront and cross-examine the  
24 witnesses against them; the right to present evidence and to testify on their own behalf; the right  
25 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
26 documents; the right to reconsideration and court review of an adverse decision; and all other  
27 rights accorded by the California Administrative Procedure Act and other applicable laws.

28             10         Respondents, and each of them, voluntarily, knowingly, and intelligently

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  
              Pharmacy Permit No. PHY 46141

8   AND

9   MICHAEL STEPHEN KYLE  
10    Exemption Certificate No. EXC 15203

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

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

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

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

24                   4.       Respondent understands and agrees that if he ever applies for licensure or  
25 petitions for reinstatement in the State of California, the Board shall treat it as a new application  
26 for licensure. Respondent must comply with all the laws, regulations and procedures for  
27 licensure in effect at the time the application or petition is filed, and all of the charges and  
28 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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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*  
 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 45141, 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

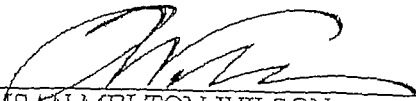
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ENDORSEMENT

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

BOJ.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.

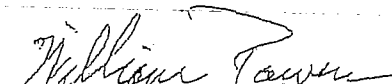
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision regarding Respondents Bandana Trading Company d.b.a. Correct Touch Pharmacy, Bandana Trading Company d.b.a. CT International and Michael Stephen Kyle only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

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

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,

15  
16 BANDANA TRADING  
d.b.a. CT INTERNATIONAL  
17 4340 Santa Fe Rd.  
San Luis Obispo, CA 93401

18 Wholesale Permit No. WLS 3575,

19  
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

26 Exemption Certificate No. EXC 15203

27 Respondents.

28

1 Complainant alleges:

2 PARTIES

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

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

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

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

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

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

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

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

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

28 ///

1 5. On or about October 21, 1999, the Board issued Exemption Certificate No.  
2 EXC 15203 to Michael Stephen Kyle (Respondent Kyle) to oversee the operations of a wholesale  
3 distributor in California. The Exemption Certificate was in full force and effect at all times  
4 relevant to the charges brought herein and will expire on October 1, 2004, unless renewed.

5 JURISDICTION

6 6. This Accusation is brought before the Board, under the authority of the  
7 following laws. All section references are to the Business and Professions Code unless otherwise  
8 indicated.

9 7. Section 118, subdivision (b), provides that the suspension, expiration,  
10 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with  
11 a disciplinary action during the period within which the license may be renewed, restored,  
12 reissued or reinstated.

13 8. Section 4005 states:

14 "(a) The board may adopt rules and regulations, not inconsistent with the laws of  
15 this state, as may be necessary for the protection of the public. Included therein shall be the right  
16 to adopt rules and regulations as follows: for the proper and more effective enforcement and  
17 administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of  
18 persons and establishments licensed under this chapter; pertaining to establishments wherein any  
19 drug or device is compounded, prepared, furnished, or dispensed; providing for standards of  
20 minimum equipment for establishments licensed under this chapter; and pertaining to the sale of  
21 drugs by or through any mechanical device.

22 "(b) Notwithstanding any provision of this chapter to the contrary, the board may  
23 adopt regulations permitting the dispensing of drugs or devices in emergency situations, and  
24 permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to  
25 prescribe in a state other than California where the person, if licensed in California in the same  
26 licensure classification would, under California law, be permitted to prescribe drugs or devices  
27 and where the pharmacist has first interviewed the patient to determine the authenticity of the  
28 prescription.

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.”

28     ///

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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WHOLESALE ACTIVITY AT 4340 SANTA FE ROAD

1  
2           20.     Respondent Correct Touch Pharmacy's address of record is 4340 Santa Fe  
3 Road, Suite B, San Luis Obispo, California 93401, with special business hours of Tuesdays for  
4 two hours.

5           21.     On or between May 15, 2003 and November 18, 2003, Respondent  
6 Correct Touch Pharmacy did not fill any prescriptions.

7           22.     On or between May 15, 2003 and November 19, 2003, Respondent  
8 Correct Touch Pharmacy had a record "Current Inventory" of zero.

9           23.     Respondent CT International's address of record is 4340 Santa Fe Road,  
10 San Luis Obispo, California 93401.

11           24.     Bandana Trading Inc. owns both Correct Touch Pharmacy and CT  
12 International with Respondent Kyle as the designated president for both.

13           25.     On or between May 15, and October 31, 2003, Respondent Correct Touch  
14 Pharmacy purchased an inventory of at least \$143,058.97 from wholesale licensed distributors  
15 AmerisourceBergen, Anda Inc., and Cardinal Health, who used the "ship to" address of 4340  
16 Santa Fe Road, San Luis Obispo, California 93401, without a Suite B designation.

17           26.     Respondent CT International is a licensed wholesale distributor. However,  
18 according to Respondent CT International, some larger wholesale distributors like  
19 AmerisourceBergen, would not sell certain drugs to Respondent CT International due to  
20 contractual agreements with the drug manufacturers.

21           27.     Respondent Correct Touch Pharmacy was and is not a licensed distributor.  
22 Licensed pharmacies are permitted to buy from licensed distributors such as AmerisourceBergen,  
23 Anda Inc., and Cardinal Health.

24           28.     One hundred percent of the purchases of dangerous drugs by Respondent  
25 Correct Touch Pharmacy were received, stored and sold by Respondent CT International.

26           29.     Respondent CT International sold the dangerous drugs as retail sales to  
27 various surgical centers, hospitals, health centers and other pharmacies.

28     ///

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)(3)(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	Urasyn	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 THIRD CAUSE FOR DISCIPLINE

2 (Failure to Maintain Accurate Records)

3 33. Respondent CORRECT TOUCH PHARMACY and JOHN GERADIN  
4 COLE are subject to disciplinary action under section 4300 for unprofessional conduct as  
5 defined in section 4301, subdivisions (j) and (o), in conjunction with section 4005, for violating  
6 section 4081, subdivision (a), in that on or between May 15, 2003 and October 31, 2003 (at  
7 which time Respondent Cole was responsible for the daily operations of Correct Touch  
8 Pharmacy), Respondents failed to maintain records of sale, acquisition or disposition of  
9 dangerous drugs or dangerous devices when Correct Touch Pharmacy received dangerous drugs  
10 from licensed wholesalers and transferred ownership of dangerous drugs to CT International  
11 without issuance of proper documentation.

12 FOURTH CAUSE FOR DISCIPLINE

13 (Failure to Maintain a Current Inventory)

14 34. Respondents CORRECT TOUCH PHARMACY and JOHN GERADIN  
15 COLE, Correct Touch Pharmacy's pharmacist-in-charge, is subject to disciplinary action under  
16 section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
17 conjunction with section 4005, for violating section 4081, subdivision (a), in that on or between  
18 May 15, 2003 and October 31, 2003 (at which time Respondent Cole was responsible for the  
19 daily operations of Correct Touch Pharmacy), Respondent Correct Touch Pharmacy failed to  
20 maintain a "Current Inventory" as defined by California Code of Regulations, title 16,  
21 section 1718.

22 CT INTERNATIONAL

23 FIFTH CAUSE FOR DISCIPLINE

24 (Failure to Maintain Accurate Records and Current Inventory)

25 35. Respondent CT INTERNATIONAL, a licensed wholesaler, is subject to  
26 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,  
27 subdivisions (j), and (o), in conjunction with section 4005, for violating section 4081,  
28 subdivision (a), and California Code of Regulations, title 16, section 1709.1, in that on or

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 devices 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 devices 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

26 ///

27 ///

28 ///

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  
Department of Consumer Affairs  
State of California

27 Complainant

28 80025852