

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

In the Matter of the Accusation Against:

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

Original Pharmacy Permit No. PHY 47044

and

FRANKLIN PETESCH DAVISON  
1114 Carson Street  
Colusa, CA 95923

Original Pharmacist License No. RPH 42614

and

JAMES ARCH DAVISON  
640 Market Street  
Colusa, CA 95932

Original Pharmacist License No. RPH 20987

Respondents.

Case No. 5525

OAH No. 2016041013

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER [DAVISON DRUG &  
STATIONERY ONLY]**

**DECISION AND ORDER**

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

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

It is so ORDERED on April 19, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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

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

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

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

19 **and**

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

22 **Original Pharmacist License No. RPH**  
23 **42614,**

24 **and**

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

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

28 Respondents.

Case No. 5525

OAH No. 2016041013

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER [DAVISON  
DRUG & STATIONARY ONLY]**

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

3 PARTIES

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

8 2. Respondent Davison Drug & Stationery, Franklin P. Davison aka Franklin Petesch  
9 Davison, Owner, James A. Davison aka James Arch Davison, Pharmacist-in-Charge (Respondent  
10 Davison Drug) is represented in this proceeding by attorney Jonathan A. Klein, whose address is:  
11 455 Market Street, Suite 1480, San Francisco, CA 94105.

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

18 JURISDICTION

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

23 5. A copy of First Amended Accusation No. 5525 is attached as Exhibit A and  
24 incorporated herein by reference.

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

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

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

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

18 **DISCIPLINARY ORDER**

19 IT IS HEREBY ORDERED that Original Pharmacy Permit Number PHY 47044 issued to  
20 Respondent Davison Drug & Stationery, Franklin P. Davison aka Franklin Petesch Davison,  
21 Owner, and James A. Davison, aka James Arch Davison, Pharmacist-in-Charge, is revoked.  
22 However, the revocation is stayed and Respondent Davison Drug is placed on probation for six  
23 (6) years on the following terms and conditions.

24 1. **Obey All Laws**

25 Respondent Davison Drug's owner shall obey all state and federal laws and regulations.

26 Respondent Davison Drug's owner shall report any of the following occurrences to the  
27 Board, in writing, within seventy-two (72) hours of such occurrence:

28  an arrest or issuance of a criminal complaint for violation of any provision of the

1 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
2 substances laws

- 3  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
4 criminal complaint, information or indictment
- 5  a conviction of any crime
- 6  discipline, citation, or other administrative action filed by any state or federal agency  
7 which involves Respondent Davison Drug's Original Pharmacy Permit or which is  
8 related to the practice of pharmacy or the manufacturing, obtaining, handling or  
9 distributing, billing, or charging for any drug, device, or controlled substance.

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

11 **2. Report to the Board**

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

21 **3. Interview with the Board**

22 Upon receipt of reasonable prior notice, Respondent Davison Drug's owner shall appear in  
23 person for interviews with the Board or its designee, at such intervals and locations as are  
24 determined by the Board or its designee. Failure to appear for any scheduled interview without  
25 prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews  
26 with the Board or its designee during the period of probation, shall be considered a violation of  
27 probation.

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1           **4. Cooperate with Board Staff**

2           Respondent Davison Drug's owner shall cooperate with the Board's inspection program and  
3 with the Board's monitoring and investigation of Respondent Davison Drug's compliance with the  
4 terms and conditions of his probation. Failure to cooperate shall be considered a violation of  
5 probation.

6           **5. Reimbursement of Board Costs**

7           As a condition precedent to successful completion of probation, Respondent Davison  
8 Drug's owner shall pay to the Board its costs of investigation and prosecution in the amount of  
9 \$24,644.75, jointly and severally with Respondents Franklin Petesch Davison and James Arch  
10 Davison. Respondent Davison Drug shall be permitted to pay these costs in a payment plan  
11 approved by the Board. There shall be no deviation from this schedule absent prior written  
12 approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be  
13 considered a violation of probation.

14           The filing of bankruptcy by Respondent Davison Drug's owner shall not relieve  
15 Respondent Davison Drug of its responsibility to reimburse the Board its costs of investigation  
16 and prosecution.

17           **6. Probation Monitoring Costs**

18           Respondent Davison Drug's owner shall pay any costs associated with probation  
19 monitoring as determined by the Board each and every year of probation. Such costs shall be  
20 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such  
21 costs by the deadline(s) as directed shall be considered a violation of probation.

22           **7. Status of License**

23           Respondent Davison Drug's owner shall, at all times while on probation, maintain current  
24 licensure with the Board. If Respondent Davison Drug's owner submits an application to the  
25 Board, and the application is approved, for a change of location, change of permit, or change of  
26 ownership, the Board shall retain continuing jurisdiction over the license, and Respondent  
27 Davison Drug shall remain on probation as determined by the Board. Failure to maintain current  
28 licensure shall be considered a violation of probation.

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

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

6 Following the effective date of this Decision, should Respondent Davison Drug's owner  
7 discontinue business, Respondent Davison Drug's owner may tender the Original Pharmacy  
8 Permit to the Board for surrender. The Board or its designee shall have the discretion whether to  
9 grant the request for surrender or take any other action it deems appropriate and reasonable.  
10 Upon formal acceptance of the surrender of the license, Respondent Davison Drug will no longer  
11 be subject to the terms and conditions of probation.

12 Upon acceptance of the surrender, Respondent Davison Drug's owner shall relinquish the  
13 premises wall and renewal license to the Board within ten (10) days of notification by the Board  
14 that the surrender is accepted. Respondent Davison Drug's owner shall further submit a  
15 completed Discontinuance of Business form according to Board guidelines and shall notify the  
16 Board of the records inventory transfer.

17 Respondent Davison Drug's owner shall also, by the effective date of this Decision, arrange  
18 for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a  
19 written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and  
20 that identifies one or more area pharmacies capable of taking up the patients' care, and by  
21 cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients.  
22 Within five days of its provision to the pharmacy's ongoing patients, Respondent Davison Drug's  
23 owner shall provide a copy of the written notice to the Board. For the purposes of this provision,  
24 "ongoing patients" means those patients for whom the pharmacy has on file a prescription with  
25 one or more refills outstanding, or for whom the pharmacy has filled a prescription within the  
26 preceding sixty (60) days.

27 Respondent Davison Drug's owner may not apply for any new licensure from the Board for  
28 three (3) years from the effective date of the surrender. Respondent Davison Drug's owner shall



1 meet all requirements applicable to the license sought as of the date the application for that  
2 license is submitted to the Board.

3 Respondent Davison Drug's owner further stipulates that he shall reimburse the Board for  
4 its costs of investigation and prosecution prior to the acceptance of the surrender.

5 **9. Notice to Employees**

6 Respondent Davison Drug's owner shall, upon or before the effective date of this Decision,  
7 ensure that all employees involved in permit operations are made aware of all the terms and  
8 conditions of probation, either by posting a notice of the terms and conditions, circulating such  
9 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent  
10 place and shall remain posted throughout the probation period. Respondent Davison Drug's  
11 owner shall ensure that any employees hired or used after the effective date of this Decision are  
12 made aware of the terms and conditions of probation by posting a notice, circulating a notice, or  
13 both. Additionally, Respondent Davison Drug's owner shall submit written notification to the  
14 Board, within fifteen (15) days of the effective date of this Decision, that this term has been  
15 satisfied. Failure to submit such notification to the Board shall be considered a violation of  
16 probation.

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

20 **10. Owners and Officers: Knowledge of the Law**

21 Respondent Davison Drug shall provide, within thirty (30) days after the effective date of  
22 this Decision, signed and dated statements from its owners, including any owner or holder of ten  
23 percent (10%) or more of the interest in Respondent Davison Drug or Respondent Davison Drug's  
24 stock, and any officer, stating under penalty of perjury that said individuals have read and are  
25 familiar with state and federal laws and regulations governing the practice of pharmacy. The  
26 failure to timely provide said statements under penalty of perjury shall be considered a violation  
27 of probation.

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**11. Posted Notice of Probation**

Respondent Davison Drug's owner shall prominently post a probation notice provided by the Board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

Respondent Davison Drug's owner shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

Failure to post such notice shall be considered a violation of probation.

**12. Violation of Probation**

If Respondent Davison Drug's owner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent Davison Drug's Original Pharmacy Permit, and probation shall be automatically 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 that was stayed.

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

**13. Completion of Probation**

Upon written notice by the Board or its designee indicating successful completion of probation, Respondent Davison Drug's Original Pharmacy Permit will be fully restored.

1           **14. Community Services Program**

2           Within sixty (60) days of the effective date of this Decision, Respondent Davison Drug's  
3 owner shall submit to the Board or its designee, for prior approval, a community service program  
4 in which Respondent Davison Drug shall provide free health-care related services to a community  
5 or charitable facility or agency equivalent to \$50,000.00 worth of services in drug mail back  
6 envelopes, sharps disposal containers, providing naloxone to patients if prescribed opioids when  
7 appropriate, or any other community service activity directly related to the causes for discipline in  
8 Accusation No. 5525. Respondent Davison Drug shall also make a \$25,000.00 financial donation  
9 to a non-profit organization that focuses its efforts on addressing the prescription drug epidemic.

10           Within thirty (30) days of Board approval thereof, Respondent Davison Drug's owner shall  
11 submit documentation to the Board demonstrating commencement of the community service  
12 program. Respondent Davison Drug's owner shall report on progress with the community service  
13 program in the quarterly reports.

14           Failure to timely submit, commence, or comply with the program shall be considered a  
15 violation of probation.

16           **15. Separate File of Records**

17           Respondent Davison Drug's owner shall maintain and make available for inspection a  
18 separate file of all records pertaining to the acquisition or disposition of all controlled substances.  
19 Failure to maintain such file or make it available for inspection shall be considered a violation of  
20 probation.

21           **16. Consultant Pharmacist Review of Pharmacy Operations**

22           During the period of probation, Respondent Davison Drug shall retain an independent  
23 consultant at its own expense who shall be responsible for reviewing pharmacy operations on a  
24 monthly basis for compliance by Respondent Davison Drug with state and federal laws and  
25 regulations governing the practice of pharmacy and for compliance by Respondent Davison Drug  
26 with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by  
27 and not on probation with the Board and whose name shall be submitted to the Board or its  
28 designee, for prior approval, within thirty (30) days of the effective date of this Decision. During

1 the period of probation, the Board or its designee retains the discretion to reduce the frequency of  
2 the pharmacist consultant's review of Respondent Davison Drug's operations. Failure to timely  
3 retain, seek approval of, or ensure timely reporting by the consultant shall be considered a  
4 violation of probation

5 **17. Civil Penalty**

6 Respondent Davison Drug shall pay to the Board a civil penalty of \$15,000.00 within  
7 ninety (90) days of the effective date of this Decision.

8 Respondent understands and agrees that this civil penalty is an administrative fine as  
9 defined in 11 U.S.C. § 523(a)(7), and is non-dischargeable in bankruptcy. The filing of  
10 bankruptcy by Respondent Davison Drug's owner shall not relieve Respondent Davison Drug of  
11 the obligation to pay the civil penalty.

12 Failure to timely pay this civil penalty shall be considered a violation of probation. Further,  
13 absent prior written approval by the Board or its designee, Respondent Davison Drug may not  
14 successfully complete probation until this amount is paid in full.

15 **18. Remedial Education**

16 Within thirty (30) days of the effective date of this Decision, Respondent Davison Drug  
17 shall submit to the Board or its designee, for prior approval, an appropriate program of remedial  
18 education related to corresponding responsibility, to be completed by all of Respondent Davison  
19 Drug's pharmacist staff. The program of remedial education shall consist of at least six hours,  
20 which shall be completed within six months of the effective date of this Decision, and which shall  
21 be completed at Respondent Davison Drug's own expense. All remedial education shall be in  
22 addition to, and shall not be credited toward, continuing education (CE) courses used for license  
23 renewal purposes.

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

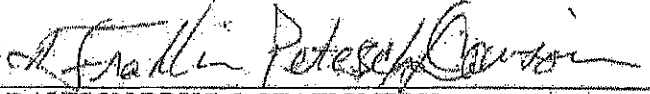
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1 Following the completion of the course, the Board or its designee may require Respondent  
2 Davison Drug's pharmacist staff, at Respondent Davison Drug's own expense, to take an  
3 approved examination to test Respondent Davison Drug's pharmacist staff's knowledge of the  
4 course. If Respondent Davison Drug's pharmacist staff do not achieve a passing score on the  
5 examination, this failure shall be considered a violation of probation. Any such examination  
6 failure shall require Respondent Davison Drug's pharmacist staff to take another course approved  
7 by the Board in the same subject area.

8 Respondents will be permitted to commence this remedial education before the effective  
9 date of the Decision.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorney, Jonathan A. Klein. I understand the stipulation and the effect it  
13 will have on my Original Pharmacy Permit. I enter into this Stipulated Settlement and  
14 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
15 Decision and Order of the Board of Pharmacy.

16  
17 DATED: 3-20-17   
18 DAVIDSON DRUG & STATIONERY  
19 FRANKLIN P. DAVIDSON, aka FRANKLIN  
20 PETESCH DAVIDSON, OWNER  
21 Respondent

22 I have read and fully discussed with Respondent Davison Drug & Stationery, Franklin P.  
23 Davison, aka Franklin Petesch Davison, Owner, and James A. Davison, aka James Arch Davison,  
24 Pharmacist-in-Charge, the terms and conditions and other matters contained in the above  
25 Stipulated Settlement and Disciplinary Order. I approve its form and content.

26  
27 DATED: 3/24/17   
28 JONATHAN A. KLEIN  
Attorney for Respondent

///

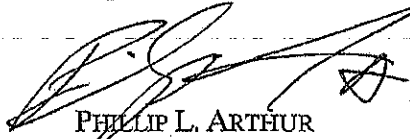
ENDORSEMENT

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

Dated: 3/24/17

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General



PHILLIP L. ARTHUR  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 5525**

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation Against:

Case No. 5525

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

**FIRST AMENDED  
ACCUSATION**

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

17 **and**

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

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

21 **and**

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

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

25 **Respondents.**

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1 Complainant alleges:

2 **PARTIES**

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

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

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

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

19 **JURISDICTION**

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

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

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

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

27 (1) Suspending judgment.

28 (2) Placing him or her upon probation.

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

2 (4) Revoking his or her license.

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

5 7. Code section 4300.1 states:

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

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

11 Any person who has been denied a license or whose license has been  
12 revoked or is under suspension, or who has failed to renew his or her license while it  
13 was under suspension, or who has been a manager, administrator, owner member,  
14 officer, director, associate, or partner of any partnership, corporation, firm, or  
15 association whose application for a license has been denied or revoked, is under  
16 suspension or has been placed on probation, and while acting as the manger,  
17 administrator, owner, member, officer, director, associate, or partner had knowledge  
18 or knowingly participated in any conduct for which the license was denied, revoked,  
19 suspended, or placed on probation, shall be prohibited from serving as a manger,  
20 administrator, owner, member, officer, director, associate, or partner of a licensee as  
21 follows:

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

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

21 ....

22 **STATUTORY AND REGULATORY PROVISIONS**

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

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

27 ...

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

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in  
2 or abetting the violation of or conspiring to violate any provision or term of this  
3 chapter or of the applicable federal and state laws and regulations governing  
4 pharmacy, including regulations established by the board or by any other state or  
5 federal regulatory agency . . . .

6 10 Code section 4113, subdivision (c), states that "[t]he pharmacist-in-charge shall be  
7 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining  
8 to the practice of pharmacy."

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

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

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

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

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

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

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

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

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

#### COST RECOVERY

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

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

3 CONTROLLED SUBSTANCES

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

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

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

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

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

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

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

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

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

26 ///

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

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

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

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

7 **STATEMENT OF FACTS**

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

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

16 30. A Board analyst ran CURES<sup>2</sup> reports showing Dr. A. L.'s prescribing habits.  
17 Davison Drug & Stationery was identified as one of the two pharmacies dispensing the most  
18 prescriptions for Dr. A. L.'s patients. Dr. A. L.'s practice was located in Colusa, California,  
19 approximately three blocks from Davison Drug & Stationery.

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

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

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

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

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

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

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

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

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

17 **FIRST CAUSE FOR DISCIPLINE**

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

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

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

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violations of State Laws Regulating Controlled Substances)**

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

16 **THIRD CAUSE FOR DISCIPLINE**

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

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



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

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violations of State Laws Regulating Controlled Substances)**

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

14 **OTHER MATTERS**

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

21 **MATTERS IN AGGRAVATION**

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

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

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

15 **PRAYER**

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

- 18 1. Revoking or suspending Original Pharmacy Permit Number PHY 47044, issued to  
19 Franklin P. Davison, also known as Franklin Petesch Davison, owner of Davison Drug &  
20 Stationery;
- 21 2. Revoking or suspending Original Pharmacist License Number RPH 42614, issued to  
22 Franklin P. Davison, also known as Franklin Petesch Davison;
- 23 3. Revoking or suspending Original Pharmacist License Number RPH 20987, issued to  
24 James A. Davison, also known as James Arch Davison;
- 25 4. Prohibiting Franklin P. Davison from serving as a manager, administrator, owner,  
26 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
27 Number PHY 47044 is placed on probation or until Pharmacy Permit Number PHY 47044 is  
28 reinstated if Pharmacy Permit Number 47044 issued to Davison Drug & Stationery is revoked;

