

1 KAMALA D. HARRIS
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 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4346

11 **PRIORITY PHARMACEUTICALS INC.**
12 **4040 Sorrento Valley Blvd., Suite D**
13 **San Diego, CA 92121**
14 **DAVID ZEIGER, President,**
15 **Pharmacist License No. RPH 26202**

A C C U S A T I O N

16 **Wholesaler License No. WLS 5145**

17 **and**

18 **JANET LEE MARSH**
19 **30842 Wisteria Circle**
20 **Murrieta, CA 92563**

21 **Designated Representative No. EXC 17770**

22 Respondents.

23 Complainant alleges:

24 PARTIES

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

27 2. On or about December 3, 2007, the Board issued Wholesaler License No. WLS 5145
28 to Priority Pharmaceuticals Inc. (Respondent Priority). The License was in effect at all times
relevant herein and will expire December 1, 2012, unless renewed. Since on or about December
3, 2007, David Zeiger, Pharmacist License No. RPH 26202, has been President of Respondent
Priority. Business and Professions Code section 4307 is applicable herein.

1 3. On or about January 4, 2005, the Board issued Designated Representative License
2 No. EXC 17770 to Janet Lee Marsh (Respondent Marsh). The License was in effect at all times
3 relevant herein and will expire January 1, 2013, unless renewed. Since on or about December 3,
4 2007, Respondent Marsh has been Designated Representative in Charge for Respondent Priority.

5 JURISDICTION

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

9 5. Section 4011 of the Code provides that the Board shall administer and enforce both
10 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
11 Act [Health & Safety Code, § 11000 et seq.].

12 6. Section 4300(a) of the Code provides that every license issued by the Board may be
13 suspended or revoked.

14 7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
15 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
16 disciplinary action during the period within which the license may be renewed, restored, reissued
17 or reinstated. Section 4402(e) of the Code provides that any non-pharmacist license issued by the
18 Board may be canceled if not renewed within 60 days after expiration, and any license canceled
19 in this fashion may not be reissued but will instead require a new application to seek reissuance.

20 STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

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

7 9. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include
8 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,
9 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes
10 possession of, any drug or device included in Section 4022."

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

15 11. Section 4126.5, subdivision (a), of the Code states:

16 "(a) A pharmacy may furnish dangerous drugs only to the following:

17 (1) A wholesaler owned or under common control by the wholesaler from whom the
18 dangerous drug was acquired.

19 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

20 (3) A licensed wholesaler acting as a reverse distributor.

21 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug
22 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to
23 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

24 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized
25 by law.

26 (6) A health care provider that is not a pharmacy but that is authorized to purchase
27 dangerous drugs.

28 (7) To another pharmacy under common control."

1 12. California Code of Regulations, title 16, section 1783, subdivision (d) provides, in
2 pertinent part, that a manufacturer or wholesaler shall not accept payment for, or allow the use of
3 an entity's credit to establish an account for, the purchase of dangerous drugs or devices from any
4 person other than the owner(s) or executive officer(s) listed on the permit, on a permit's account.

5 COST RECOVERY

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

9 FACTUAL BACKGROUND

10 14. For a period of time that included but was not necessarily limited to dates on and/or
11 between January 2009 and December 2011, Respondents were engaged in a business practice that
12 involved the purchase of dangerous drugs from various pharmacies throughout California and the
13 re-sale of those dangerous drugs to wholesalers and pharmacies within and outside California.

14 15. During that time period, Respondents made purchases from at least fifty (50) different
15 California pharmacies, on at least five hundred (500) occasions. Respondent Priority was not the
16 wholesaler that had supplied the dangerous drugs to any of these pharmacies. Over thirty-five
17 (35) different dangerous drugs were purchased from California pharmacies by Respondents.

18 16. During and/or prior to that time period, Respondents solicited pharmacies to supply
19 Respondents with dangerous drugs that Respondents would identify to the pharmacies by daily,
20 weekly, or occasional lists of dangerous drugs (with dosages and strengths) titled "ITEMS WE
21 ARE LOOKING FOR" and/or "ADDITIONAL ITEMS WE ARE INTERESTED IN." At the
22 direction and/or pursuant to the encouragement of Respondents, the pharmacies would acquire the
23 dangerous drugs listed by Respondents, typically from the pharmacies' primary wholesaler(s).¹
24 The drugs acquired by the client pharmacies would then be re-sold to Respondent Priority.

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26 ¹ For the purposes of this Accusation, "primary wholesaler" refers to the wholesaler from
27 which the pharmacy purchased the bulk of its dangerous drugs, and/or with which the pharmacy
28 enjoyed a contractual relationship giving the pharmacy an "account" with the wholesaler. Most if
not all pharmacies establish a "primary wholesaler" account relationship with a single wholesaler.
The pharmacy is issued an account number to use in ordering from the primary wholesaler.

1 17. All of the client pharmacies utilized by Respondents were community pharmacies, yet
2 all or nearly all of the drugs that were purchased by these pharmacies and re-sold to Respondents
3 were drugs primarily used in hospital or other urgent-care environments. The client pharmacies
4 were purchasing agents for Respondents, buying drugs for Respondents, not their own patients.
5 None of the client pharmacies were licensed by the Board as wholesalers.

6 18. Respondents offered and/or paid the client pharmacies a premium, typically at least
7 ten (10) percent over invoice (the price at which the pharmacy acquired the drug), plus shipping.

8 19. At least twenty (20) of the pharmacies eventually turned over their ordering privileges
9 with their primary wholesaler(s) to Respondents, such that Respondents were able to just submit
10 orders directly to the primary wholesaler(s), using the client pharmacies' account information.

11 20. Respondents re-sold the drugs that were acquired from pharmacies to wholesalers and
12 pharmacies within and outside California, often at a substantial markup. A sampling of over fifty
13 (50) purchase and re-sale transactions revealed an average markup of two hundred thirteen (213)
14 percent, with individual transactions showing markups as high as 3166%, 3255%, and 6363%.

15 21. Respondents re-sold a portion of the dangerous drugs acquired from pharmacies to
16 other wholesalers. On at least one occasion, Respondents misrepresented and/or omitted such a
17 re-sale or transfer. By way of a transaction on or about August 5, 2011, Respondents invoiced a
18 purchase of a dangerous drug from a Garfield Pharmacy, located in Beverly Hills, CA. However,
19 the shipping label that Respondents provided to Garfield Pharmacy for shipment of the drug to a
20 customer located in Cordova, TN represented that the shipment was coming not from Respondent
21 Priority but from another wholesaler (Vital Healthcare LLC) located in Savannah, GA.

22
23 **CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS**

24 FIRST CAUSE FOR DISCIPLINE

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

26 22. Respondent(s) are each and severally subject to discipline under section(s) 4301,
27 4301(f), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s)
28 committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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SECOND CAUSE FOR DISCIPLINE

(Making or Signing Document(s) Falsely Representing Existence or Nonexistence of Facts)

23. Respondent(s) are each and severally subject to discipline under section(s) 4301, 4301(g), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s) made or signed one or more certificates or other documents falsely representing the existence or nonexistence of a state of facts.

THIRD CAUSE FOR DISCIPLINE

(Violation of Law(s))

24. Respondent(s) are each and severally subject to discipline under section(s) 4301, 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs, and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged, assisted in, abetted, or conspired toward, transaction(s) violating section 4160 of the Code, in that the client pharmacies that purchased dangerous drugs on behalf of Respondent(s), and/or sold dangerous drugs to Respondent(s) for re-sale, by so doing acted as unlicensed wholesalers.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Law(s))

25. Respondent(s) are each and severally subject to discipline under section(s) 4301, 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs, and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged, assisted in, abetted, or conspired toward, transaction(s) violating section 4126.5 of the Code, by purchasing dangerous drugs from and/or on behalf of pharmacies under unauthorized conditions.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Violation of Law(s))

3 26. Respondent(s) are each and severally subject to discipline under section(s) 4301,
4 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21,
5 Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs,
6 and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of,
7 or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged,
8 assisted in, abetted, or conspired toward, transaction(s) violating California Code of Regulations,
9 title 16, section 1783, subdivision (d), by causing the purchase of dangerous drugs by one or more
10 client pharmacies from a primary wholesaler on a pharmacy account controlled by Respondents.

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12 SIXTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct)

14 27. Respondents are each and severally subject to discipline under section 4301 of the
15 Code, in that the acts described in paragraphs 14 to 26 constitute unprofessional conduct.

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20 PRAYER

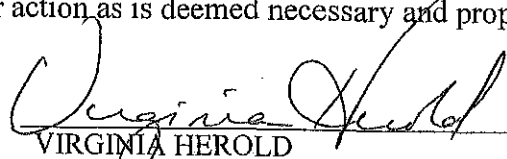
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

- 23 1. Revoking or suspending Wholesaler License No. WLS 5145, issued to Priority
24 Pharmaceuticals Inc. (Respondent Priority);
- 25 2. Revoking or suspending Designated Representative License No. EXC 17770, issued
26 to Janet Lee Marsh (Respondent Marsh);
- 27 3. 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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4. Taking such other and further action as is deemed necessary and proper.

DATED: 9/14/12



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

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