

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *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 Citation Against:
12 **AMERISOURCEBERGEN DRUG CORP.,**
13 **1325 W. Striker Avenue**
Sacramento, California 95834
14 **Wholesaler Permit No. WLS 4383,**
15 **and**
16 **JOHN E. JESSEE**
17 **1325 W. Striker Avenue**
Sacramento, CA 95834
18 **Designated Representative in Charge No.**
19 **EXC 13663**
20 Respondents.

Case No. 5078

A C C U S A T I O N

21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 25 2. On or about February 2, 2004, the Board of Pharmacy issued Wholesaler Permit
26 Number WLS 4383 to AmerisourceBergen Drug Corp. (Respondent). The Wholesaler Permit
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 February 1, 2015, unless renewed.

1 3. On or about March 18, 1997, the Board of Pharmacy issued Designated
2 Representative in Charge Certificate Number EXC 13663 to John E. Jessee (Respondent). The
3 Designated Representative in Charge Certificate was in full force and effect at all times relevant
4 to the charges brought herein and will expire on March 1, 2015.

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 unless otherwise indicated.

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

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

14 7. Section 4301.1 provides that the expiration, cancellation, forfeiture or suspension of a
15 board-issued license by operation of law or by order or decision of the Board or a court of law,
16 the placement of a license on a retired status, or the voluntary surrender of a license by a licensee
17 shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or
18 action or disciplinary proceeding against, the licensee or to render a decision suspending or
19 revoking the license.

20 **STATUTORY AND REGULATORY PROVISIONS**

21 8. Section 4300 of the Code states:

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

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

25 (1) Suspending judgment.

26 (2) Placing him or her upon probation.

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

27 (4) Revoking his or her license.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

9. Section 4301 of the Code states, in pertinent part:

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

(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.

...

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

...

10. Section 4059.5 of the Code states, in pertinent part:

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.

...

11. Section 4022 of the Code states:

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

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

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

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

///
///
///

1 12. California Code of Regulations, title 16, section 1783, states, in pertinent part:

2 (a) A manufacturer or wholesaler shall furnish dangerous drugs or devices only to an
3 authorized person; prior to furnishing dangerous drugs and devices to a person not
4 known to the furnisher, the manufacturer or wholesaler shall contact the board or, if
the person is licensed or registered by another government entity, that entity, to
confirm the recipient is an authorized person.

5 (b) "Authorized person" means a person to whom the board has issued a permit which
6 enables the permit holder to purchase dangerous drugs or devices for use within the
7 scope of its permit. "Authorized person" also means any person in this state or in
8 another jurisdiction within the United States to the extent such furnishing is
9 authorized by the law of this state, any applicable federal law, and the law of the
jurisdiction in which that person is located. The manufacturer or wholesaler
furnishing to such person shall, prior to furnishing the dangerous drugs and devices,
establish the intended recipient is legally authorized to receive the dangerous drugs or
devices.

10 (c) Dangerous drugs or devices furnished by a manufacturer or wholesaler shall be
11 delivered only to the premises listed on the permit; provided that a manufacturer or
12 wholesaler may furnish drugs to an authorized person or an agent of that person at the
13 premises of the manufacturer or wholesaler if (1) the identity and authorization of the
14 recipient is properly established and (2) this method of receipt is employed only to
15 meet the immediate needs of a particular patient of the authorized person. Dangerous
16 drugs or devices may be furnished to a hospital pharmacy receiving area provided
17 that a pharmacist or authorized receiving personnel signs, at the time of delivery, a
18 receipt showing the type and quantity of the dangerous drugs or devices so received.
19 Any discrepancy between the receipt and the type and quantity of dangerous drugs
20 and devices actually received shall be reported to the delivering manufacturer or
21 wholesaler by the next business day after the delivery to the pharmacy receiving area.

22 ...

23 13. California Code of Regulations, title 16, section 1770, states:

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

COST RECOVERY

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

28 ///

1 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Failure to Require Pharmacist to Sign for Delivery of Dangerous Drugs**
4 **Including Controlled Substances)**

5 16. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action under
6 Code sections 4059.5, subdivision (a), in that from approximately February 1, 2011 through
7 December 3, 2012, it allowed non-pharmacists at A&O Specialty Pharmacy, located at 536
8 Abbott Street in Salinas, California, to sign for and receive deliveries of dangerous drugs and
9 controlled substances, in violation of state and federal laws governing controlled substances,
10 dangerous drugs, and pharmacy.

11 **Respondent John E. Jessee, License No. EXC 13663**

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Require Pharmacist to Sign for Delivery of Dangerous Drugs**
14 **Including Controlled Substances)**

15 17. Respondent John E. Jessee is subject to disciplinary action under Code sections
16 4059.5, subdivision (a), in that from approximately February 1, 2011 through December 3, 2012,
17 he failed to ensure compliance with state and federal laws governing controlled substances,
18 dangerous drugs, and pharmacy by allowing non-pharmacists at A&O Specialty Pharmacy,
19 located at 536 Abbott Street in Salinas, California, to sign for and receive deliveries of dangerous
20 drugs and controlled substances.

21 **DISCIPLINE CONSIDERATIONS**

22 18. To determine the degree of discipline, if any, to be imposed on Respondents,
23 Complainant alleges the following:

24 19. On or about January 10, 2008, in a prior action, the Board of Pharmacy issued
25 Citation Number CI 2007 35280 to Respondent AmerisourceBergen Drug Corp. and ordered it to
26 pay a \$2,500.00 fine for, while under the supervision of the Designated Representative-In-Charge
27 John E. Jessee, failing to establish procedures to ensure that dangerous drugs and devices are
28

1 delivered only to authorized premises, and received and signed for by a pharmacist. That Citation
2 is now final and is incorporated by reference as if fully set forth.

3 20. On or about June 25, 2014, the Board of Pharmacy issued Letters of Admonishment
4 to Respondent AmerisourceBergen Drug Corp., and to Respondent Jessee, as the designated
5 representative in charge, for failing to ensure that a pharmacist sign for and receive a dangerous
6 drug delivery.

7 **PRAYER**

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

10 1. Revoking or suspending Wholesaler Permit Number WLS 4383, issued to
11 AmerisourceBergen Drug Corp.;

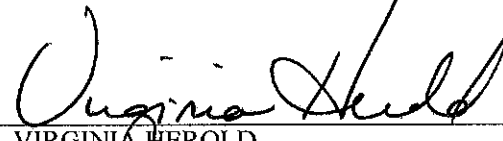
12 2. Revoking or suspending Designated Representative in Charge Number EXC 13663,
13 issued to John E. Jessee;

14 3. Ordering AmerisourceBergen Drug Corp. and John E. Jessee to pay the Board of
15 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;

17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

9/20/14



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