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

10 In the Matter of the Statement of Issues Against:

Case No. 3405

11 **DROGUERIA DE LA VILLA, INC.**
12 **Avenida Jose De Diego # 17**
13 **Arecibo, Puerto Rico 00612**

STATEMENT OF ISSUES

14 **Applicant for Nonresident Wholesaler License**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about October 24, 2008, the Board of Pharmacy, Department of Consumer
21 Affairs received an Application for Nonresident Wholesaler License and associated application
22 materials from Drogueria De La Villa, Inc., Sonia Jusino Thuna, President, Wayne Scott Thuna,
23 Vice President, Jared Brandon Thuna, Designated Representative in Charge (Respondent). On or
24 about September 29, 2008, Jared Brandon Thuna certified under penalty of perjury by signing the
25 Application that, *inter alia*, each and every statement made in the Application is true and correct;
26 that all supplemental statements filed with the Application are true, complete, and accurate; and
27 that no person other than the applicant(s) has any direct or indirect interest in the business for
28 which application is made. The Board denied the application on March 5, 2009.

1 JURISDICTION AND STATUTORY/REGULATORY PROVISIONS

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

5 4. Section 480 of the Code states, in pertinent part:

6 “(a) A board may deny a license regulated by this code on the grounds that the applicant
7 has one of the following:

8 “(1) Been convicted of a crime. . . Any action which a board is permitted to take
9 following the establishment of a conviction may be taken . . . irrespective of a subsequent order
10 under the provisions of Section 1203.4 of the Penal Code.

11 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
12 benefit himself or another, or substantially injure another; or

13 “(3) Done any act which if done by a licentiate of the business or profession in
14 question, would be grounds for suspension or revocation of license.

15 “The board may deny a license pursuant to this subdivision only if the crime or act is
16 substantially related to the qualifications, functions or duties of the business or profession for
17 which application is made.”

18 “(c) A board may deny a license regulated by this code on the ground that the applicant
19 knowingly made a false statement of fact required to be revealed in the application”

20 5. Section 4300, subdivision (c), of the Code states:

21 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
22 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
23 guilty of unprofessional conduct and who has met all other requirements for licensure. . . .”

24 6. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is
25 defined to include, but not be limited to, any of the following:

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

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

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

5 (n) The revocation, suspension, or other discipline by another state of a license to practice
6 pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

7 (o) Violating or attempting to violate, directly or indirectly, or assisting 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 7. Section 4043 of the Code defines "wholesaler" to mean and include any person/entity
12 that acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a
13 nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of,
14 any drug or device included in Section 4022 (dangerous drugs and dangerous devices).

15 8. Section 4160 of the Code provides, in pertinent part, that no person/entity may act as
16 a wholesaler of any dangerous drug or dangerous device without first obtaining a license from the
17 Board, that a separate license shall be required for each place of business owned or operated by a
18 wholesaler, and that no wholesaler license may be issued until the wholesaler applicant identifies
19 a designated representative-in-charge responsible for compliance with state and federal laws.

20 9. Section 4161 of the Code provides, in pertinent part, that any person/entity located
21 outside the state that (1) ships, sells, mails, or delivers dangerous drugs or dangerous devices into
22 this state or (2) sells, brokers, or distributes dangerous drugs or dangerous devices within this
23 state, shall be considered a nonresident wholesaler, and before shipping, selling, mailing, or
24 delivering dangerous drugs or dangerous devices to a site within the state, or selling, brokering, or
25 distributing dangerous drugs or dangerous devices within the state, must be licensed by the Board
26 as a nonresident wholesaler, must have a separate license for each owned or operated place of
27 business performing either/any of these activities, and must identify a designated representative-
28 in-charge responsible for the person/entity's compliance with state and federal laws.

1 10. Section 125.9 of the Code provides, in pertinent part, that the Board may establish, by
2 regulation, a system for issuance to a licensee of a citation to contain an order of abatement or an
3 order to pay an administrative fine assessed by the Board, or both, and the system shall include a
4 provision whereby failure of a licensee to pay a fine within 30 days of the date of assessment by a
5 citation not being appealed, may result in disciplinary action being taken.

6 11. Section 148 of the Code provides, in pertinent part, that the Board may establish, by
7 regulation, a similar system for issuance of a citation to an unlicensed person/entity acting in the
8 capacity of a licensee or registrant under the jurisdiction of the Board.

9 12. Section 4314 of the Code similarly provides, in pertinent part, that the Board may
10 issue citations containing fines and orders of abatement for any violation of the Pharmacy Law.

11 13. California Code of Regulations, title 16, section 1775 et seq. provide, in pertinent
12 part, that the Executive Officer for the Board may issue citations containing either or both a fine
13 and an order of abatement for any violation of the Pharmacy Law. Section 1775.1 provides, in
14 pertinent part, that failure to pay a fine within 30 days of the date of assessment by a citation not
15 being appealed, may result in disciplinary action being taken by the Board.

16 FIRST CAUSE FOR DENIAL OF APPLICATION

17 (Wholesaling Without a License)

18 14. Respondent's application is subject to denial under the following section(s) of the
19 Code: 4161; 480(a)(3) by reference to 4301(j), (o), and/or 4161; and/or 4300(c) by reference to
20 4301(j), (o), and/or 4161; in that Respondent, on at least 300 occasions between on or about
21 August 31, 2006 and on or about November 20, 2009, shipped, sold, mailed, and/or delivered
22 dangerous drugs or dangerous devices into California, and/or sold, brokered, and/or distributed
23 dangerous drugs or dangerous devices within California, without having a license to perform
24 wholesaler or nonresident wholesaler activities within California issued by the Board, and by so
25 doing violated the Pharmacy Law; did acts which would constitute causes for discipline against a
26 license; engaged in unprofessional conduct; violated statutes regulating controlled substances and
27 dangerous drugs; and/or violated/attempted to violate, directly or indirectly, or assisted or abetted
28 violation of, or conspired to violate, federal or state laws and regulations governing pharmacy.

1 title 16, section 1775 et seq.; and/or 4300(c) by reference to by reference to 4301(j), (o), 125.9,
2 148, 4314, and/or California Code of Regulations, title 16, section 1775 et seq.; in that on one or
3 more occasions Respondent failed to comply with a citation issued by the Board, including by not
4 paying an assessed fine, and thereby engaged in acts that constituted causes for discipline against
5 a license; engaged in unprofessional conduct; violated statutes regulating controlled substances
6 and dangerous drugs; and/or violated/attempted to violate, directly or indirectly, assisted/abetted
7 violation of, or conspired to violate, federal or state laws and regulations governing pharmacy.

8 a. On or about January 27, 2010, Citation No. CI 2009 42762 with a fine of \$5,000.00
9 was issued to Drogueria De La Villa, Inc. for violating Business and Professions Code section
10 4161 by shipping, delivery, or mailing of dangerous drugs or dangerous devices into California
11 without a nonresident wholesaler license. That citation was not appealed; it is now final and is
12 incorporated by reference as if fully set forth herein. No payment of the fine has been received.

13 b. On or about January 27, 2010, Citation No. CI 2009 42763 with a fine of \$5,000.00
14 was issued to Drogueria De La Villa, Inc. for violating Business and Professions Code section
15 4161 by shipping, delivery, or mailing of dangerous drugs or dangerous devices into California
16 without a nonresident wholesaler license. That citation was not appealed; it is now final and is
17 incorporated by reference as if fully set forth herein. No payment of the fine has been received.

18 c. On or about April 28, 2010, Citation No. CI 2008 38274 with a fine of \$5,000.00 was
19 issued to Drogueria De La Villa, Inc. for violating Business and Professions Code section 4161
20 by shipping, delivery, or mailing of dangerous drugs or dangerous devices into California without
21 a nonresident wholesaler license. That citation was not appealed; it is now final and is
22 incorporated by reference as if fully set forth herein. No payment of the fine has been received.

23 d. On or about April 28, 2010, Citation No. CI 2009 44162 with a fine of \$5,000.00 was
24 issued to FMC Distributors, Inc. for violating Business and Professions Code section 4161 by the
25 shipping, delivery, or mailing of dangerous drugs or dangerous devices into California without a
26 nonresident wholesaler license. That citation was not appealed; it is now final and is incorporated
27 by reference as if fully set forth herein. No payment of the fine has been received.

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1 FIFTH CAUSE FOR DENIAL OF APPLICATION

2 (Unprofessional Conduct)

3 19. Respondent's application is subject to denial under the following section(s) of the
4 Code: 4300(c); 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that
5 Respondent, by the conduct described in paragraphs 14-18, engaged in unprofessional conduct.

6 OTHER CONSIDERATIONS

7 20. As additional consideration(s) in determining whether Respondent's application is
8 subject to denial, Complainant further alleges the following:

9 a. Respondent's application materials list Wayne Scott Thuna as Vice President. On or
10 about April 23, 1992, Mr. Thuna was convicted of violating Penal Code section 314, subdivision
11 (1) (Indecent Exposure), a misdemeanor. Imposition of sentence was suspended in favor of 36
12 months probation on terms and conditions including 5 days in jail. On or about October 26, 1993,
13 Mr. Thuna was convicted of violating Vehicle Code section 12031(a) (Carrying Loaded Firearm
14 on Person or in Vehicle in a Public Place), a misdemeanor. Again, imposition of sentence was
15 suspended in favor of 36 months probation on terms and conditions including 3 days in jail.

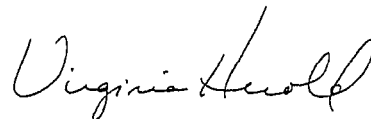
16 PRAYER

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

19 1. Denying the Application for Nonresident Wholesaler License submitted by Drogueria
20 De La Villa, Inc., Sonia Jusino Thuna, President, Wayne Scott Thuna, Vice President, Jared
21 Brandon Thuna, Designated Representative in Charge (Respondent);

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

23
24 DATED: June 15, 2010



25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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