

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

In the Matter of the Accusation Against:

JAMES E. PALM
4034 Estate Drive
Vacaville, CA 95866

Pharmacist License No. RPH 41806

Respondent.

Case No. 3165

OAH No. N-2008090921

DECISION AND ORDER

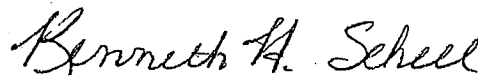
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 25, 2009.

It is so ORDERED October 26, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-7859
6 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 Accusation Against:
12 RALEY'S CENTRAL PHARMACY, No. 949
2828 Ramco Street, Suite 100
13 West Sacramento, California 95691
14 Pharmacy Permit No. PHY 45843
15 and
16 JAMES E. PALM
4034 Estate Drive
17 Vacaville, California 95866
18 Pharmacist License No. RPH 41806

Case No. 3165
OAH No. N-2008090921

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER (James
Palm, RPH 41806 only)**

Respondents.
Respondent.

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

24 PARTIES

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

1 or be a consultant to any licensee of the Board, or have access to or control the ordering,
2 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

3 Respondent shall not engage in any activity that requires the professional
4 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
5 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for
6 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to
7 own or hold an interest in any pharmacy in which he holds an interest at the time this decision
8 becomes effective unless otherwise specified in this order.

9 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
10 regulations substantially related to or governing the practice of pharmacy.

11 Respondent shall report any of the following occurrences to the Board, in writing,
12 within 72 hours of such occurrence:

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

23 3. **Reporting to the Board.** Respondent shall report to the Board
24 quarterly. The report shall be made either in person or in writing, as directed. Respondent
25 shall state under penalty of perjury whether there has been compliance with all the terms and
26 conditions of probation. If the final probation report is **not** made as directed, probation shall
27 be extended automatically until such time as the final report is made and accepted by the
28 Board.

1 4. **Interview with the Board.** Upon receipt of reasonable notice,
2 Respondent shall appear in person for interviews with the Board upon request at various
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled
4 interview without prior notification to Board staff shall be considered a violation of probation.

5 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
7 compliance with the terms and conditions of their probation. Failure to comply shall be
8 considered a violation of probation.

9 6. **Continuing Education.** Respondent shall provide evidence of efforts
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11 7. **Notice to Employers.** Respondent shall notify all present and
12 prospective employers of the decision in case number 3165 and the terms, conditions and
13 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
14 this decision, and within 15 days of Respondent undertaking new employment, Respondent
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
16 writing acknowledging the employer has read the decision in case number 3165.

17 If Respondent works for or is employed by or through a pharmacy employment
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the and terms conditions of the decision in case number 3165 in advance of
20 the Respondent commencing work at each pharmacy.

21 "Employment" within the meaning of this provision shall include any full-time, part-
22 time, temporary, relief or pharmacy management service as a pharmacist, whether the
23 Respondent is considered an employee or independent contractor.

24 8. **Consultant for Pharmacist-in-Charge.** Respondent shall not
25 supervise any intern pharmacist, perform the duties of a preceptor or serve as a consultant to
26 any entity licensed by the Board. In the event that the Respondent is currently the pharmacist-
27 in-charge of a pharmacy, the pharmacy shall retain an independent consultant at its own
28 expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for

1 compliance by Respondent with state and federal laws and regulations governing the practice
2 of pharmacy and for compliance by Respondent with the obligations of a pharmacist-in-
3 charge. The consultant shall be a pharmacist licensed by and not on probation with the Board
4 and whose name shall be submitted to the Board for its prior approval within 30 days of the
5 effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than
6 one pharmacy or at any pharmacy of which he is not the current PIC unless otherwise
7 approved by the board. The Board may for other reasons as deemed appropriate by the Board,
8 preclude the Respondent from acting as a pharmacist-in-charge.

9 **9. Reimbursement of Board Costs.** Respondent shall pay to the Board
10 its costs of investigation and prosecution in the amount of \$13,337.50. Said costs are assessed
11 jointly and severally with Raley's Central Pharmacy No. 949.

12 The filing of bankruptcy by Respondent shall not relieve Respondent of his
13 responsibility to reimburse the Board its costs of investigation and prosecution.

14 **10. Probation Monitoring Costs.** Respondent shall pay the costs
15 associated with probation monitoring as determined by the Board each and every year of
16 probation. Such costs shall be payable to the Board at the end of each year of probation.
17 Failure to pay such costs shall be considered a violation of probation.

18 **11. Status of License.** Respondent shall, at all times while on probation,
19 maintain an active current license with the Board, including any period during which
20 suspension or probation is tolled.

21 If Respondent's license expires or is canceled by operation of law or otherwise,
22 upon renewal or reapplication, Respondent's license shall be subject to all terms and
23 conditions of this probation not previously satisfied.

24 **12. License Surrender while on Probation/Suspension.** Following the
25 effective date of this decision, should Respondent cease practice due to retirement or health,
26 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may
27 tender their license to the Board for surrender. The Board shall have the discretion whether to
28 grant the request for surrender or take any other action it deems appropriate and reasonable.

1 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject
2 to the terms and conditions of probation.

3 Upon acceptance of the surrender, Respondent shall relinquish his pocket
4 license to the Board within 10 days of notification by the Board that the surrender is accepted.
5 Respondent may not reapply for any license from the Board for three years from the effective
6 date of the surrender. Respondent shall meet all requirements applicable to the license sought
7 as of the date the application for that license is submitted to the Board.

8 **13. Notification of Employment/Mailing Address Change.** Respondent
9 shall notify the Board in writing within 10 days of any change of employment. Said
10 notification shall include the reasons for leaving and/or the address of the new employer,
11 supervisor or owner and work schedule if known. Respondent shall notify the Board in
12 writing within 10 days of a change in name, mailing address or phone number.

13 **14. Tolling of Probation.** Should Respondent, regardless of residency, for
14 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
15 California, Respondent must notify the Board in writing within 10 days of cessation of the
16 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
17 (excepting the suspension period) shall not apply to the reduction of the probation period. It is
18 a violation of probation for Respondent's probation to remain tolled pursuant to the provisions.
19 of this condition for a period exceeding three years.

20 "Cessation of practice" means any period of time exceeding 30 days in which
21 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the
22 Business and Professions Code.

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

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

6 16. **Completion of Probation.** Upon successful completion of probation,
7 Respondent's license will be fully restored.

8 17. **Community Services Program.** Within 60 days of the effective date
9 of this decision, Respondent shall submit to the Board, for its prior approval, a community
10 service program in which Respondent shall provide free services to benefit the community on
11 a regular basis to a community or charitable facility or agency for at least 100 hours within the
12 first three (3) years of probation.

13 18. **Remedial Education.** Within 30 days of the effective date of this
14 decision, Respondent shall submit to the Board, for its prior approval, an appropriate program
15 of remedial education related to Identifying/preventing drug losses. The program of remedial
16 education shall consist of at least six (6) hours, which shall be completed within the first year
17 of probation at Respondent's own expense. The period of probation shall be extended until
18 such remedial education is successfully completed and written proof, in a form acceptable to
19 the Board, is provided to the Board. All remedial education shall be in addition to continuing
20 education courses used for license renewal purposes. Failure to complete the remedial
21 education as set forth herein above is grounds for the filing of a petition to revoke probation.

22 Following the completion of each course, the Board may administer an
23 examination to test the Respondent's knowledge of the course.

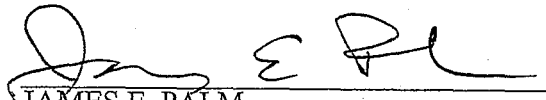
24 19. **No Ownership of Premises.** Except as the board may otherwise allow,
25 in its sole discretion, respondent shall not own, have any legal or beneficial interest in, or
26 serve as a manager, administrator, member, officer, director, associate, or partner of any
27 business, firm, partnership, or corporation currently or hereinafter licensed by the Board.
28 Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the

1 Board within 90 days following the effective date of this decision and shall immediately
2 thereafter provide written proof thereof to the Board. This provision shall be read in
3 conjunction with, and harmonized with, paragraph 8 above.

4 ACCEPTANCE

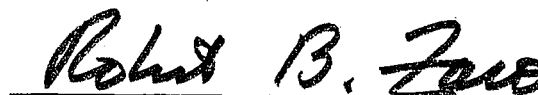
5 I have carefully read the above Stipulated Settlement and Disciplinary Order
6 and have fully discussed it with my attorneys, Robert B. Zaro. I understand the stipulation and
7 the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and
8 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
9 Decision and Order of the Board.

10 DATED: 4/30/09

11
12 
13 JAMES E. PALM
14 Respondent

15 I have read and fully discussed with Respondent Raley's Central Pharmacy;
16 James E. Palm the terms and conditions and other matters contained in the above Stipulated
17 Settlement and Disciplinary Order. I approve its form and content.

18 DATED: May 15, 2009

19
20 
21 ROBERT B. ZARO
22 Attorney for Respondent

1 ENDORSEMENT

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

4
5 DATED: 6/24/09

6 EDMUND G. BROWN JR., Attorney General
7 of the State of California

8 JANICE K. LACHMAN
9 Supervising Deputy Attorney General

10 
11 KENT D. HARRIS
12 Deputy Attorney General

13 Attorneys for Complainant

14 DOJ Matter ID: SA2008301403
15 Palm final stip.wpd

Exhibit A
Accusation No. 3165

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-7859
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 RALEY'S CENTRAL PHARMACY NO. 949
2928-Ramco Street, Suite 100
13 West Sacramento, CA 95691
14 Pharmacy Permit No. PHY 45843
15 JAMES PALM
4034 Estate Drive
16 Vacaville, CA 95866
17 Pharmacist License No. RPH 41806
18 Respondents.

Case No. 3165

ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about March 7, 2002, the Board of Pharmacy issued Pharmacy
25 License PHY 45843 to Raley's Central Pharmacy No. 949 (Respondent Raley's).
- 26 3. On or about July 29, 1988, the Board of Pharmacy issued Pharmacist
27 License No. RPH 41806 to James Palm, (Respondent Palm). Respondent Palm has been the
28 designated "pharmacist-in-charge" at respondent Raley's since 3/7/2002.

JURISDICTION

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

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

5. Section 4081 of the Code states in pertinent part:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible with the pharmacist-in-charge or representative-in-charge for maintaining the records and inventory described in this section."

6. Section 4113 states in pertinent part:

"(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

"(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with a state and federal laws and regulations pertaining to the practice of pharmacy."

///
///
///
///

1 7. California Code of Regulations, Title 16, section 1714, states in pertinent
2 part:

3 ...
4 "(b) Each pharmacy licensed by the board shall maintain its facilities, space,
5 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured, and
6 distributed..."

7 (d) Each pharmacist while on duty, shall be responsible for the security of the
8 prescription department including provisions for effective control against theft or diversion of
9 dangerous drugs and devices and records of such drugs and devices...."

10 8. California Code of Regulations, Title 16, section 1718, states in pertinent
11 part:

12 "(e) 'Current Inventory' as used in Sections 4081 and 4332 of the Business and
13 Professions Code shall be considered to include complete accountability for all dangerous drugs
14 handled by every licensee enumerated in Sections 4081 and 4332."

15 "The controlled substances inventories required by Title 21, CFR, section 1304
16 shall be available for inspection upon request for at least 3 years after the date of the inventory."

17 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
18 request the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 10. DRUG CLASSIFICATIONS:

<u>BRAND</u>	<u>GENERIC</u>	<u>DANGEROUS</u>	<u>CONTROLLED</u>	<u>INDICATIONS</u>
<u>NAME</u>	<u>NAME</u>	<u>DRUG PER</u>	<u>SUBSTANCE</u>	<u>FOR USE</u>
		B. & PC 4022	PER H & SC	
Vicodin, Norco	Hydrocodone/ Acetaminophen (APAP)	YES	HSC 11056(e)(4)	Pain

<u>BRAND</u>	<u>GENERIC</u>	<u>DANGEROUS</u>	<u>CONTROLLED</u>	<u>INDICATIONS</u>
<u>NAME</u>	<u>NAME</u>	<u>DRUG PER</u>	<u>SUBSTANCE</u>	<u>FOR USE</u>
		B & PC 4022	PER H & SC	
Ambien	Zolpidem	YES	HSC 11057(d)(32)	Anxiety
Lyrica	Pregablin	YES	CFR 1308.15(e)(1)	Neuropathic Pain
	Propoxyphene Napsylate/ Acetaminophen	YES	HSC 11057	Pain
	Clonazepam	YES	HSC 11057(d)(7)	Anxiety
	Diphenoxylate/ Atropine	YES	HSC 11058(c)(4)	Anti-diarrheal
	Temazepam	YES	HSC 11057(d)(29)	Anxiety
	Butorphanol	YES	HSC 11057(c)(3)	Migraine
	Acetaminophen/ Codeine	YES	HSC 11056	Pain
	Diazepam	YES	HSC 11057(d)(9)	Anxiety
	Alprazolam	YES	HSC 11057(d)(1)	Anxiety
	Lorazepam	YES	HSC 11057(d)(16)	Anxiety
	Phentermine	YES	HSC 11057(f)(4)	Anorexiant
Oxandrin	Oxandrolone	YES	HSC 11056(f)(23)	Androgen
	Hydrocodone/ Ibuprofen	YES	HSC 11056	Pain
Lunesta	Zopiclone	YES	CFR 1308.14(c)(51)	Insomnia
Provigil	Modafinil	YES	HSC 11057(f)(3)	Narcolepsy
	Acetaminophen/ Dichloralphen- azone/Isometheptene	YES		Migraine

SECOND CAUSE FOR DISCIPLINE
(Failure to Maintain Current Inventory)

16. Respondent Raley's Central Pharmacy No. 949 is subject to disciplinary action under California Code of Regulations, Title 16, section 1718 in conjunction with Business and Professions Code section 4081 in that it failed to maintain complete accountability of all controlled substances/dangerous drugs between the dates of March 2006 and August, 2007 as follows:

SHORTAGE

- a. Ambien (5mg - 67 dosage units, 10mg - 254 dosage units, CR 12.5mg - 74 dosage units);
- b. Lyrica (75mg - 19 dosage units, 150mg - 1 dosage unit);
- c. Vicodin (5mg/500mg - 12 dosage units, 7.5mg/750mg - 23 dosage units);
- d. Propoxyphene-Napsylate/APAP - 129 dosage units;
- e. Clonazepam (0.5mg - 202 dosage units, 1mg - 195 dosage units, 2mg - 49 dosage units);
- f. Diphenoxylate/Atropine - 498 dosage units;
- g. Temazepam (15mg - 45 dosage units, 30mg - 26 dosage units);
- h. Hydrocodone/APAP (5mg/500mg - 24,937 dosage units, 7.5mg/500mg - 1011 dosage units, 7.5mg/750mg - 678 dosage units, 10mg/650mg - 1 dosage unit, 10mg/500mg - 38 dosage units, 10mg/325mg - 200,654 dosage units);
- i. APAP/Codeine (300mg/30mg - 229 dosage units, 300mg/60mg - 18 dosage units);
- j. Diazepam 5mg - 22 dosage units;
- k. Alprazolam (0.25mg - 393 dosage units, 0.5mg - 432 dosage units, 1mg - 11 dosage units);
- l. Lorazepam (0.5mg - 249 dosage units, 1mg - 1,044 dosage units);
- m. Phentermine 37.5mg - 20 dosage units;
- n. Oxandrin 2.5mg - 77 dosage units;

- 1 o. Zolpidem (5mg - 4 dosage units, 10mg - 73 dosage units);
2 p. Hydrocodone/Ibuprofen 7.5mg/200mg - 52 dosage units;
3 q. Lunesta 2mg - 333 dosage units; & Provigil 200mg - 483 dosage units.

4 **OVERAGE**

- 5 r. Diazepam 10mg - 14 dosage units;
6 s. Lorazepam 2mg - 1 dosage unit;
7 t. Lunesta 3mg - 5 dosage units;
8 u. Acetaminophen/Dichloralphenazone/Isometheptene - 10 dosage units.

9 **RESPONDENT PALM**
10 **FIRST CAUSE FOR DISCIPLINE**

(Unsecured Pharmacy/Failure to Provide Effective Control)

11 17. Respondent, James Palm is subject to disciplinary action under Title 16
12 CCR Section 1714(D) in that as pharmacist-in-charge, he failed to provide effective control on
13 the security of the prescription department against theft of controlled substances/dangerous drugs
14 as set forth in paragraphs 11-14 above.

15 **SECOND CAUSE FOR DISCIPLINE**

(Failure to Maintain Complete Accountability of Controlled Substances)

16
17 18. Respondent, James Palm is subject to disciplinary action under Title 16
18 CCR Section 1718, in conjunction with Business and Professions Code section 4081, pursuant to
19 Business and Professions Code section 4113(b) in that as pharmacist-in-charge, he failed to
20 maintain complete accountability of all controlled substances/dangerous drugs at Raley's during
21 the relevant time period as set forth in paragraphs 11-14 and 16 above.

22 **PRAYER**

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

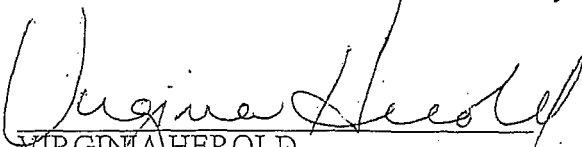
- 25 1. Revoking or suspending Pharmacy License Number PHY 45843, issued to
26 Raley's Central Pharmacy No. 949;
27 2. Revoking or suspending Pharmacist License No. RPH 41806, issued to
28 James Palm;

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

3. Ordering Raley's Central Pharmacy No. 949 and James Palm to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/13/08



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

Raley's Accu 30494675.wpd
SA2008301403