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7

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

11 In the Matter of the Accusation Against:

12 **ESP SERVICES**
13 8513 W. Washington Boulevard
Culver City, CA 90232
14 **Original Wholesale Permit No. WLS 2329**

15 and

16 **EAST SIDE PHARMACY**
17 8513 W. Washington Boulevard, Suite A
Culver City, CA 90232
18 **Original Pharmacy Permit No. PHY**
39439

19 and

20
21 **ROBERT LLOYD KARNEY**
22 9408 Beverlywood Street
Los Angeles, CA 90034
23 **Designated Representative-in-Charge**
Original Certificate Number EXC 10845

24 and

25 **HELEN MIZRAHIE-JONAH**
26 6317 Warner Drive
Los Angeles, CA 90048
27 **Original Pharmacist License No. RPH**
26276
28

Case No. 3481

OAH No. L-2011060632

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

re: **SHAUN LEE**

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and
SHAUN LEE
5829 Hazelbrook Avenue
Lakewood, CA 90712
**Original Pharmacist License No. RPH
42786**
Respondents.

FINDINGS OF FACT

1. On or about September 9, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3481 against Shaun Lee (Respondent) before the Board of Pharmacy. (A true and correct copy of the Accusation is attached as Exhibit A.)

2. On or about August 10, 1989, the Board of Pharmacy (Board) issued Original Pharmacist License No. RPH 42786 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3481, will expire on May 31, 2013, unless renewed.

3. On or about September 16, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3481, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 5829 Hazelbrook Avenue, Lakewood, California 90712.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about September 20, 2010, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's address of record and it informed him that an administrative hearing in this matter

1 was scheduled for January 30 through February 1, 2012. Respondent failed to appear at that
2 hearing.

3 6. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the
5 respondent files a notice of defense, and the notice shall be deemed a specific denial
6 of all parts of the accusation not expressly admitted. Failure to file a notice of
7 defense shall constitute a waiver of respondent's right to a hearing, but the agency in
8 its discretion may nevertheless grant a hearing.

9 7. California Government Code section 11520 states, in pertinent part:

10 (a) If the respondent either fails to file a notice of defense or to appear at
11 the hearing, the agency may take action based upon the respondent's express
12 admissions or upon other evidence and affidavits may be used as evidence without
13 any notice to respondent.

14 8. Pursuant to its authority under Government Code section 11520, the Board finds
15 Respondent is in default. The Board will take action without further hearing and, based on the
16 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
17 taking official notice of all the investigatory reports, exhibits and statements contained therein on
18 file at the Board's offices regarding the allegations contained in Accusation No. 3481, finds that
19 the charges and allegations in Accusation No. 3481, are separately and severally, found to be true
20 and correct by clear and convincing evidence.

21 9. Taking official notice of its own internal records, pursuant to Business and
22 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
23 and Enforcement is \$5,000 for this Respondent. Actual costs are \$37,249.25 as of January 26,
24 2012.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Shaun Lee has subjected his
27 Pharmacist License No. RPH 42786 to discipline.

28 2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
based upon the following violations alleged in the Accusation which are supported by the
evidence contained in the Default Decision Evidence Packet in this case:

1 a. Business and Professions Code section 4105(a) – *Failure to Retain Acquisition and*
2 *Disposition Records on Premises*; and

3 b. Business and Professions Code section 4081(a) and California Code of Regulations,
4 title 16, section 1718 – *Failure to Maintain Current Inventory and Acquisition and Disposition*
5 *Records for Inspection on Premises*.

6 ORDER

7 *IT IS SO ORDERED* that Pharmacist License No. RPH 42786, heretofore issued to
8 Respondent Shaun Lee, is revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
10 written motion requesting that the Decision be vacated and stating the grounds relied on within
11 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
12 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

13 This Decision shall become effective on September 26, 2012.

14 It is so ORDERED on August 27, 2012.

15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18 
19 By _____

20 STANLEY C. WEISSER
21 Board President
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27 Attachment:
28 Exhibit A: Accusation No. 3481

Exhibit A

Accusation No. 3481

1 EDMUND G. BROWN JR.
2 Attorney General of California
3 GREGORY J. SALUTE
4 Supervising Deputy Attorney General
5 DESIREE TULLENERS
6 Deputy Attorney General
7 State Bar No. 157464
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22 and

23 **ROBERT KARNEY**

24 9408 Beverlywood Street
25 Los Angeles, CA 90034

26 Designated Representative-in-Charge
27 Original Certificate Number EXC 10845

28 and

A C C U S A T I O N

1 **HELEN MIZRAHIE-JONAH**

2 6317 Warner Drive
3 Los Angeles, CA 90048

4 Original Pharmacist License No. RPH 26276

5 and

6 **SHAUN LEE**

7 5829 Hazelbrook Avenue
8 Lakewood, CA 90712

9 Original Pharmacist License No. RPH 42786

10 Respondents.

11 Complainant alleges:

12 **PARTIES**

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

15 **ESP Services – Wholesale License**

16 2. On or about February 5, 1991, the Board of Pharmacy (Board) issued Original
17 Wholesale Permit Number WLS 2329 to ESP Medical Supply, Inc., to do business as ESP
18 Services (Respondent ESP). The Pharmacist License was in full force and effect at all times
19 relevant to the charges brought herein, and expired on February 1, 2009.

20 **Easy Side Pharmacy – Pharmacy License**

21 3. On or about August 9, 1993, the Board issued Original Permit Number 39439 to ESP
22 Medical Supply, Inc., to do business as East Side Pharmacy (Respondent East Side). The
23 Pharmacy permit was in full force and effect at all times relevant to the charges brought herein,
24 and will expire on August 1, 2010, unless renewed.

25 **Robert Karney – Designated Representative-in-Charge Certificate**

26 4. On or about July 26, 1991, the Board issued Original Certificate Number EXC 10845
27 to Robert Lloyd Karney (Respondent Karney). The Exemptee certificate was in full force and
28 effect at all times relevant to the charges brought herein, and expired on November 1, 2009.

1 (c) A conviction within the meaning of this section means a plea or verdict of
2 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to
3 take following the establishment of a conviction may be taken when the time for appeal has
4 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting
5 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
6 the provisions of Section 1203.4 of the Penal Code.”

7 10. Section 4059.5(a) states, in pertinent part:

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

14 11. Section 4060 states, in pertinent part:

15 “No person shall possess any controlled substance, except that furnished to a person upon
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
18 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
19 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
20 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
21 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
22 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
25 labeled with the name and address of the supplier or producer.”

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1 12. Section 4081 states, in pertinent part:

2 “(a) All records of manufacture and of sale, acquisition, or disposition of
3 dangerous drugs or dangerous devices shall be at all times during business hours open to
4 inspection by authorized officers of the law, and shall be preserved for at least three years from
5 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
6 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
7 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
8 certificate, license, permit, registration, or exemption under Division 2 (commencing with Section
9 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of
10 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
11 dangerous devices.
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13 13. Section 4105 states, in pertinent part:

14 “(a) All records or other documentation of the acquisition and disposition of
15 dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on
16 the licensed premises in a readily retrievable form.”
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18 14. Section 4169(a)(1) states, in pertinent part:

19 “(a) A person or entity may not do any of the following:

20 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at
21 wholesale with a person or entity that is not licensed with the board as a
22 wholesaler or pharmacy, in violation of Section 4163.”
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24 15. Section 4300 states, in pertinent part, that every license issued by the Board is
25 subject to discipline, including suspension or revocation.

26 16. Section 4301 states, in pertinent part:

27 “The board shall take action against any holder of a license who is guilty of unprofessional
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1 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

2 Unprofessional conduct shall include, but is not limited to, any of the following:

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4 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
5 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
6 otherwise, and whether the act is a felony or misdemeanor or not.
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9 (j) The violation of any of the statutes of this state or of the United States
10 regulating controlled substances and dangerous drugs.

11

12 (l) The conviction of a crime substantially related to the qualifications, functions,
13 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. . . . A plea or verdict of
17 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the
18 meaning of this provision.
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21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
23 applicable federal and state laws and regulations governing pharmacy, including regulations
24 established by the board or by any other state or federal regulatory agency.
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27 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
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1 of the Board.”

2 17. Section 4342, states, in pertinent part:

3 “(a) The board may institute any action or actions as may be provided by law and
4 that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs
5 that do not conform to the standard and tests as to quality and strength, provided in the latest
6 edition of the United States Pharmacopoeia or the National Formulary, or that violate any
7 provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section
8 109875) of Division 104 of the Health and Safety Code).”

9
10 18. Health and Safety Code section 11350, states, in pertinent part:

11 “(a) Except as otherwise provided in this division, every person who possesses (1)
12 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
17 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

18
19 19. Health and Safety Code section 11352 states, in pertinent part:

20 “(a) Except as otherwise provided in this division, every person who transports,
21 imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import
22 into this state, sell, furnish, administer, or give away, or attempts to import into this state or
23 transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of
24 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of
25 Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision
26 (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is
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1 a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
2 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
3 prison for three, four, or five years.”

4 20. Health and Safety Code section 11377 states, in pertinent part:

5 “(a) Except as authorized by law and as otherwise provided in subdivision (b) or
6 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
7 Business and Professions Code, every person who possesses any controlled substance which is
8 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
9 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
10 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
11 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
12 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
13 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
14 than one year or in the state prison.”

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17 21. Health and Safety Code section 111330 states:

18 “Any drug or device is misbranded if its labeling is false or misleading in any
19 particular.”

20 22. Health and Safety Code section 111430 states:

21 “A drug or device is misbranded if it was manufactured in an establishment not
22 duly registered with the Secretary of Health, Education, and Welfare of the United States.”

23 23. Health and Safety Code section 111440 states:

24 “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale
25 any drug or device that is misbranded.”
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24. Health and Safety Code section 111450 states:

"It is unlawful for any person to receive in commerce any drug or device that is misbranded or to deliver or proffer for delivery any drug or device."

REGULATORY PROVISIONS

25. California Code of Regulations, title 16, section 1718, states, in pertinent part

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

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

26. California Code of Regulations, title 16, section 1770, states, in pertinent part:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree 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."

27. California Code of Regulations, title 16, section 1783, states, in pertinent part'

"(a) A manufacture or wholesaler shall furnish dangerous drugs or devices only to an authorized person; prior to furnishing dangerous drugs and devices to a person not 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."

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1 COST RECOVERY

2 28. Section 125.3 states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.
6

7 CONTROLLED SUBSTANCES

8 29. "Cialis", brand name of tadalafil a treatment for erectile dysfunction, is categorized as
9 a dangerous drug pursuant to Business and Professions Code section 4022.

10 30. "Klonopin", a brand name for clonazepam, is an anti-anxiety benzodiazepine, and
11 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(7)
12 and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.
13

14 31. "Restoril", a brand name for temazepam, is a Schedule IV controlled substance
15 pursuant to Health and Safety Code section 11057(d)(29) and a dangerous drug pursuant to
16 Business and Professions Code section 4022(c).

17 32. "Valium", a trade name for the chemical substance diazepam, a benzodiazepam
18 derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section
19 11057(d)(9) and is categorized as a dangerous drug pursuant to Business and Professions Code
20 section 4022.
21

22 33. "Vicodin" and/or "Vicodin ES", trade name for a combination drug containing
23 hydrocodone bitartrate (opioid analgesic) and acetaminophen, is a Schedule III controlled
24 substance as defined in Health and Safety Code section 11056(e)(4) and is categorized as a
25 dangerous drug according to Business and Professions Code section 4022.

26 34. "Alprazolam" is a Schedule IV controlled substance as defined in Health and Safety
27 Code section 11057(d)(1) and is categorized as a dangerous drug according to Business and
28

1 Professions Code section 4022.

2 **FIRST CAUSE FOR DISCIPLINE**

3 *(Conviction of a Substantially-Related Crime)*

4 35. Respondent Karney is subject to disciplinary action under section 4301, subdivision
5 (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
6 Respondent Karney was convicted of a crime substantially related to the qualifications, functions
7 or duties of a designated representative-in-charge.
8

9 a. On or about August 28, 2009, after pleading guilty, Respondent Karney was
10 convicted of one count of violating Health and Code section 11352, subdivision (a)
11 [transportation of a controlled substance], a felony, in the criminal proceeding entitled *The People*
12 *of the State of California v. Robert Lloyd Karney* (Super. Ct. Los Angeles County, 2009, No.
13 SA068964). Respondent Karney was placed on probation for 30 months with terms and
14 conditions.
15

16 b. The circumstances surrounding the conviction are that on or about September 1,
17 2008, Respondent Karney was involved in a traffic accident in Los Angeles County, arrested at
18 the scene, and booked for driving under the influence and for possession of controlled substances.
19 At the time of the arrest, large amounts of various controlled substances were found in
20 Respondent Karney's vehicle. Respondent Karney was subsequently charged with transporting
21 one thousand one hundred and sixty eight (1168) Vicodin pills, a controlled substance.
22

23 **SECOND CAUSE FOR DISCIPLINE**

24 *(Possession of a Controlled Substance without a Valid Prescription)*

25 36. Respondent Karney is subject to disciplinary action under section 4301, subdivision
26 (j), for violating section 4060, in conjunction with Health and Safety Code sections 11350,
27 subdivision (a), and 11377, subdivision (a), in that, on or about September 1, 2008, Respondent
28

1 Karney was found to be in possession of controlled substances, including but not limited to thirty
2 three (33) Klonopin, eighty one (81) Valium 10mg., three hundred eighty two (382) Vicodin ES,
3 nine hundred thirty two (932) Hydrocodone APAP 10/325, thirty (30) brand and generic Valium
4 10 mg., one thousand 1000 Alprazolam 1 mg, and two hundred 200 Restoril 7.5 mg, without a
5 valid prescription. Complainant refers to, and by this reference incorporates, the allegations set
6 forth above in paragraph 35, subdivisions (a) and (b), as though fully set forth herein.
7

8 THIRD CAUSE FOR DISCIPLINE

9 *(Unprofessional Conduct – Assisting in or Abetting Unlicensed Wholesale Activity)*

10 37. Respondent ESP Services and Respondent Karney are subject to disciplinary action
11 under section 4301, subdivision (o), in that, from on or about January 23, 2006 to December 14,
12 2006, Respondent ESP Services and Respondent Karney aided and abetted E-Tail Network, (an
13 entity which is not licensed as a wholesaler in California) in their unlicensed wholesale
14 distribution of dangerous drugs on twenty-nine (29) occasions to a California pharmacy, on one
15 (1) occasion to an out-of-state pharmacy, and on two (2) occasions to out-of-state wholesale
16 distributors.
17

18 FOURTH CAUSE FOR DISCIPLINE

19 *(Receiving and Selling a Misbranded Dangerous Drug)*

20 38. Respondent ESP Services and Respondent Karney are subject to disciplinary action
21 under Health and Safety Code sections 111330, 111430, 111440 and 111450, in that, from on or
22 about February 10, 2006 to June 2, 2008, as follows:
23

24 a. On twenty-five (25) different occasions, Respondent ESP Services and Respondent
25 Karney imported and received amino acids for injection from Laboratorios Calce de Mexico
26 which had no label, and were, therefore, misbranded because the labeling could not be accurate
27 and had to be false. The manufacturer of the amino acids was not registered with the U.S.
28

1 Secretary of Health, Education and Welfare.

2 b. Respondent ESP Services and Respondent Karney received, held, offered for sale,
3 and sold the amino acids to five (5) businesses in California and out-of-state.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 *(Purchasing Dangerous Drugs at Wholesale from Unlicensed Entity)*

6
7 39. Respondent ESP Services and Respondent Karney are subject to disciplinary action
8 under section 4169, subdivision (a)(1), in that, from on or about February 10, 2006 to June 2,
9 2008, Respondent ESP Services and Respondent Karney purchased amino acids at wholesale
10 from Laboratorios Calce de Mexico which business was not licensed as a wholesaler by the
11 Board.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 *(Furnishing Dangerous Drugs or Devices to an Unauthorized Person)*

14
15 40. Respondent ESP Services and Respondent Karney are subject to disciplinary action
16 under section 4037, in conjunction with California Code of Regulations, title 16, section 1783,
17 subdivisions (a) and (b), in that, from on or about February 10, 2006 to June 2, 2008, on more
18 than three hundred (300) occasions, Respondent ESP Services and Respondent Karney sold
19 dangerous drugs by receiving individual prescriptions for individual patients instead of in
20 response to wholesaler orders. Respondent ESP Services sold the drugs without any prescription
21 labeling to one (1) California prescriber and four (4) out-of-state treatment centers. Respondent
22 ESP charged the five (5) businesses for the dangerous drugs instead of the patients for whom the
23 prescriptions were written. Drugs sold pursuant to a valid prescription must be dispensed from a
24 pharmacy, not a wholesale distributor.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 *(Expired Dangerous Drugs in Stock for Sale)*

3 41. Respondent ESP Services and Respondent Karney are subject to disciplinary action
4 under section 4342, subdivision (a), in that, during an inspection of the premises on July 28, 2008,
5 Respondent ESP Services had at least one hundred and ninety-one (191) expired dangerous drugs
6 in stock available for inspection.
7

8 EIGHTH CAUSE FOR DISCIPLINE

9 *(Failure to Retain Acquisition and Disposition Records on Premises)*

10 42. Respondent East Side Pharmacy is subject to disciplinary action under section 4105,
11 subdivision (a), in that, between January 1, 2007 and July 28, 2008, Respondent East Side
12 Pharmacy purchased four thousand (4000) Vicodin; nine thousand five hundred (9500) Vicodin
13 ES; one thousand (1000) Hydrocodone APAP 10/325; six thousand two hundred (6200) Valium
14 10 mg.; one thousand four hundred seventy (1470) Cialis; one thousand four hundred (1400)
15 Klonopin and other dangerous drugs for a total of \$50,679.35 in purchases. During an inspection
16 on July 28, 2008, Respondent East Side Pharmacy did not have records of acquisition and
17 disposition for these drugs.
18

19 NINTH CAUSE FOR DISCIPLINE

20 *(Failure to Maintain Current Inventory and Acquisition
21 and Disposition Records for Inspection on Premises)*

22 43. Respondent East Side Pharmacy is subject to disciplinary action under section 4081,
23 subdivision (a), in conjunction with California Code of Regulations, title 16, section 1718, in that,
24 between January 1, 2007 and July 28, 2008, Respondent East Side Pharmacy purchased four
25 thousand (4000) Vicodin; nine thousand five hundred (9500) Vicodin ES; one thousand (1000)
26 Hydrocodone APAP 10/325; six thousand two hundred (6200) Valium 10 mg.; one thousand four
27 hundred seventy (1470) Cialis; one thousand four hundred (1400) Klonopin and other dangerous
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1 drugs for a total of \$50,679.35 in purchases. During an inspection on July 28, 2008, Respondent
2 East Side Pharmacy did not provide the records of acquisition and disposition for these drugs
3 either at the time of the inspection or when requested by Board inspectors. There were no
4 dangerous drugs at the pharmacy during the inspection on July 28, 2008. In the absence of drugs
5 and records, the inventory of dangerous drugs is not accurate.

6
7 **TENTH CAUSE FOR DISCIPLINE**

8 *(No Pharmacist' Signature for Receipt of Dangerous Drugs by Pharmacy)*

9 44. Respondent East Side Pharmacy is subject to disciplinary action under section
10 4059.5, subdivision (a), in that, on or about January 1, 2007 to July 28, 2008, Respondent East
11 Side Pharmacy purchased four thousand (4000) Vicodin; nine thousand five hundred (9500)
12 Vicodin ES; one thousand (1000) Hydrocodone APAP 10/325; six thousand two hundred (6200)
13 Valium 10 mg.; one thousand four hundred seventy (1470) Cialis; one thousand four hundred
14 (1400) Klonopin and other dangerous drugs for a total of \$50,679.35 in purchases. No pharmacist
15 was present at the pharmacy to sign for or receive these drugs.

16
17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 *(Unprofessional Conduct – Moral Turpitude)*

19 45. Respondent Karney is subject to disciplinary action under section 4301, subdivision
20 (f), in that, Respondent Karney committed an act involving moral turpitude between January 1,
21 2007 and July 28, 2008, when Respondent Karney ordered four thousand (4000) Vicodin; nine
22 thousand five hundred (9500) Vicodin ES; one thousand (1000) Hydrocodone APAP 10/325; six
23 thousand two hundred (6200) Valium 10 mg.; one thousand four hundred seventy (1470) Cialis;
24 one thousand four hundred (1400) Klonopin and other dangerous drugs for a total of \$50,679.35
25 in purchases from Respondent East Side Pharmacy without the knowledge of the pharmacist-in-
26 charge, signed for and received those drugs when he was not authorized to do so, and diverted
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1 those drugs from Respondent East Side Pharmacy for his self use.

2 **TWELFTH CAUSE FOR DISCIPLINE**

3 *(Failure to Retain Acquisition and Disposition Records on Premises)*

4 46. Respondent Helen Mizrahie-Jonah is subject to disciplinary action under section
5 4105, subdivision (a), in that, between January 1, 2007 and March 21, 2008, while pharmacist-in-
6 charge of Respondent East Side Pharmacy, four thousand (4000) Vicodin, six thousand (6000)
7 Vicodin ES, one thousand (1000) Hydrocodone/Acetaminophen 10/325, four thousand nine
8 hundred (4900) Valium 10 mg, nine hundred sixty (960) Cialis, one hundred (100) Klonopin and
9 other dangerous drugs totaling \$35,633.23 were purchased for the pharmacy. Respondent
10 Mizrahie-Jonah did not dispense any prescriptions during that time period, did not have
11 knowledge of any drug stock, and there were no records of acquisition and disposition in the
12 pharmacy during a Board inspection on July 28, 2008.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

14 *(Failure to Maintain Current Inventory and Acquisition
15 and Disposition Records for Inspection on Premises)*

16 47. Respondent Mizrahie-Jonah is subject to disciplinary action under section 4081,
17 subdivision (a), in conjunction with California Code of Regulations, title 16, section 1718, in that,
18 between January 1, 2007 and March 21, 2008, while pharmacist-in-charge of Respondent East
19 Side Pharmacy, Respondent Mizrahie-Jonah was responsible for the records of acquisition and
20 disposition during that time period. Four thousand (4000) Vicodin, six thousand (6000) Vicodin
21 ES, one thousand (1000) Hydrocodone/Acetaminophen 10/325, four thousand nine hundred
22 (4900) Valium 10 mg, nine hundred sixty (960) Cialis, one hundred (100) Klonopin and other
23 dangerous drugs totaling \$35,633.23 were purchased for the pharmacy. Respondent Mizrahie-
24 Jonah did not dispense any prescriptions during that time period, did not have knowledge of any
25 drug stock, and there were no records of acquisition and disposition in the pharmacy during a
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1 Board inspection on July 28, 2008.

2 **FOURTEENTH CAUSE FOR DISCIPLINE**

3 *(Failure to Retain Acquisition and Disposition Records on Premises)*

4 48. Respondent Shaun Lee is subject to disciplinary action under section 4105,
5 subdivision (a), in that, between March 22, 2008 and September 1, 2008, while pharmacist-in-
6 charge of Respondent East Side Pharmacy, three thousand five hundred (3500) Vicodin ES, one
7 thousand three hundred (1300) Valium 10 mg, five hundred ten (510) Cialis, one thousand three
8 hundred (1300) Klonopin and other dangerous drugs totaling \$15,037.12 were purchased for the
9 pharmacy. Respondent Lee did not dispense any prescriptions during that time period, did not
10 have knowledge of any drug stock, and there were no records of acquisition and disposition in the
11 pharmacy during a Board inspection on July 28, 2008.
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13 **FIFTEENTH CAUSE FOR DISCIPLINE**

14 *(Failure to Maintain Current Inventory and Acquisition
15 and Disposition Records for Inspection on Premises)*

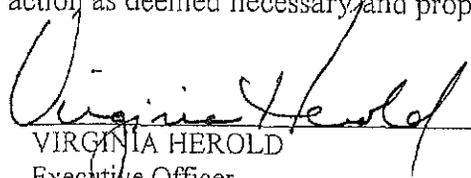
16 49. Respondent Lee is subject to disciplinary action under section 4081, subdivision (a),
17 in conjunction with California Code of Regulations, title 16, section 1718, in that, between March
18 22, 2008 and September 1, 2008, while pharmacist-in-charge of Respondent East Side Pharmacy,
19 Respondent Lee was responsible for the records of acquisition and disposition during that time
20 period. Three thousand five hundred (3500) Vicodin ES, one thousand three hundred (1300)
21 Valium 10 mg, five hundred ten (510) Cialis, one thousand three hundred (1300) Klonopin and
22 other dangerous drugs totaling \$15,037.12 were purchased for the pharmacy. Respondent Lee did
23 not dispense any prescriptions during that time period, did not have knowledge of any drug stock,
24 and there were no records of acquisition and disposition in the pharmacy during a Board
25 inspection on July 28, 2008.
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1 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

3 DATED: 9/9/10



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

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DAT/dat 6/21/10