

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

In the Matter of the Accusation Against:

**AMERISOURCEBERGEN DRUG CORP.,
1325 W. Striker Avenue
Sacramento, California 95834**

Wholesaler Permit No. WLS 4383

and

**JOHN E. JESSEE
1325 W. Striker Avenue
Sacramento, California 95834**

**Designated Representative in Charge No.
EXC 13663**

Respondents.

Case No. 5078

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL**

[Bus. & Prof. Code § 495]

**(RESPONDENT
AMERISOURCEBERGEN DRUG
CORP.)**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on May 24, 2018.

It is so ORDERED on April 24, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
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) 210-7886
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5078

12 **AMERISOURCEBERGEN DRUG CORP.,**
13 **1325 W. Striker Avenue**
Sacramento, California 95834

OAH No. 2017060685

14 **Wholesaler Permit No. WLS 4383,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

15 **and**

[Bus. & Prof. Code § 495]

16 **JOHN E. JESSEE**
17 **1325 W. Striker Avenue**
Sacramento, CA 95834

(RESPONDENT
AMERISOURCEBERGEN DRUG
CORP.)

18 **Designated Representative in Charge No.**
19 **EXC 13663**

20 Respondents.

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

23 **PARTIES**

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Xavier Becerra, Attorney General of the State of California, by Karen R. Denvir, Deputy
27 Attorney General.

28 ///

1 **CULPABILITY**

2 8. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 5078, if proven at a hearing, constitute cause for imposing discipline upon Respondent's
4 Wholesaler Permit.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest
8 those charges.

9 10. Respondent agrees that its Wholesaler Permit is subject to discipline, and agrees to be
10 bound by the Disciplinary Order below.

11 **RESERVATION**

12 11. The admissions made by Respondent herein are only for the purposes of this
13 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
14 licensing agency is involved, and shall not be admissible in any other criminal or civil
15 proceeding.

16 **CONTINGENCY**

17 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
18 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
19 communicate directly with the Board regarding this stipulation and settlement, without notice to
20 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
21 and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the
22 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
23 Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Repeval shall
24 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
25 between the parties, and the Board shall not be disqualified from further action by having
26 considered this matter.

27 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
28 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including

1 Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and
2 effect as the originals.

3 14. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
4 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
5 of their agreement. It supersedes any and all prior or contemporaneous agreements,
6 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
7 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
8 supplemented, or otherwise changed except by a writing executed by an authorized representative
9 of each of the parties.

10 15. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Board may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Wholesaler Permit Number WLS 4383 issued to
15 Respondent Amerisourcebergen Drug Corporation shall be publicly reprovved by the Board of
16 Pharmacy under Business and Professions Code section 495 in resolution of Accusation No.
17 5078, attached as exhibit A.

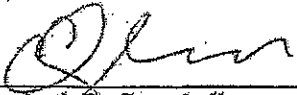
18 **Cost Recovery.** Respondent shall pay \$4972.50 to the Board for its costs associated with
19 the investigation and enforcement of this matter. Respondent shall be permitted to pay these
20 costs in a payment plan approved by the Board. If Respondent fails to pay the Board costs as
21 ordered, Respondent shall not be allowed to renew their Wholesaler Permit until Respondent pays
22 costs in full.

23 **ACCEPTANCE**

24 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
25 Repeval and have fully discussed it with my attorney, Alissa Brice Castaneda. I understand the
26 stipulation and the effect it will have on my Wholesaler Permit and I have the authority to enter
27 into this agreement on behalf of the corporation. I enter into this Stipulated Settlement and
28

1 Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be
2 bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 3/8/18


Elizabeth S. Campbell
Senior Vice President, Group General Counsel and
Chief Compliance Counsel
AMERISOURCEBERGEN DRUG CORP., WLS 4384
Respondent

9 I have read and fully discussed with Respondent Amerisourcebergen Drug Corp., WLS
10 ~~4383, the terms and conditions and other matters contained in the above Stipulated Settlement and~~
11 Disciplinary Order for Public Repeval. I approve its form and content.

12 DATED: _____

ALISSA BRICE CASTANEDA
Attorney for Respondent

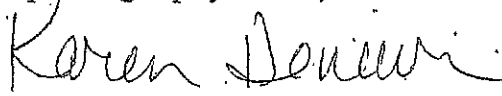
15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby
17 respectfully submitted for consideration by the Board of Pharmacy of the Department of
18 Consumer Affairs.

19
20 Dated: 3/10/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General


KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

27 SA2014114490
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1 Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be
2 bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: _____
5 Elizabeth S. Campbell
6 Senior Vice President, Group General Counsel and
7 Chief Compliance Counsel
8 AMERISOURCEBERGEN DRUG CORP., WLS 4384
9 Respondent

10 I have read and fully discussed with Respondent Amerisourcebergen Drug Corp., WLS
11 4383, the terms and conditions and other matters contained in the above Stipulated Settlement and
12 Disciplinary Order for Public Repeval. I approve its form and content.

13 DATED: 3/2/2018 _____
14 ALISSA BRICE CASTANEDA
15 Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby
18 respectfully submitted for consideration by the Board of Pharmacy of the Department of
19 Consumer Affairs.

20 Dated: _____ Respectfully submitted,
21 XAVIER BECERRA
22 Attorney General of California
23 JANICE K. LACHMAN
24 Supervising Deputy Attorney General

25 KAREN R. DENVER
26 Deputy Attorney General
27 Attorneys for Complainant

28 SA2014114490
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Exhibit A

Accusation No. 5078

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**

12 In the Matter of the Citation Against:

Case No. 5078

13 **AMERISOURCEBERGEN DRUG CORP.,**
14 **1325 W. Striker Avenue**
15 **Sacramento, California 95834**

A C C U S A T I O N

16 **Wholesaler Permit No. WLS 4383,**

17 **and**

18 **JOHN E. JESSEE**
19 **1325 W. Striker Avenue**
20 **Sacramento, CA 95834**

21 **Designated Representative in Charge No.**
22 **EXC 13663**

23 Respondents.

24 Complainant alleges:

25 **PARTIES**

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

28 2. On or about February 2, 2004, the Board of Pharmacy issued Wholesaler Permit
Number WLS 4383 to AmerisourceBergen Drug Corp. (Respondent). The Wholesaler Permit
was in full force and effect at all times relevant to the charges brought herein and will expire on
February 1, 2015, unless renewed.

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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.

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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.;

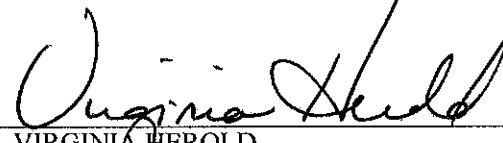
12 2. Revoking or suspending Designated Representative in Charge Number EXC 13663,
13 issued to John E. Jessee;

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