

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

In the Matter of the First Amended Accusation
Against:

RXCHANGE CO.,
STEPHEN M. COSTA, President,
MOHAMMAD M. SALEMI, Director,
and DRIC SRBUHI TONELYAN
2545 N. Ontario Street
Burbank, CA 91504
Wholesale Permit No. WLS 5795

and

SRBUHI TONELYAN
219 E. Garfield Avenue, #4
Glendale, CA 91205
Certificate Number EXC 18823

Respondents.

Case No. 5636

OAH No. 2016050685

**STIPULATED SURRENDER OF
LICENSE AND ORDER
RE RXCHANGE CO. ONLY**

DECISION AND ORDER

The attached Stipulated Surrender of License and Order 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 August 30, 2017.

It is so ORDERED on July 31, 2017.

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 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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Attorneys for Complainant
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STIPULATED SURRENDER OF
LICENSE AND ORDER
RE RXCHANGE CO. ONLY

17 **Wholesale Permit No. WLS 5795**

18 **and**

19 **SRBUHI TONELYAN**
20 **219 E. Garfield Avenue., #4**
Glendale, CA 91205

21 **Certificate Number EXC 18823**

22 Respondents.
23

24 In the interest of a prompt and speedy settlement of this matter, consistent with the public
25 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
26 the parties hereby agree to the following Stipulated Surrender of License and Order, which will
27 be submitted to the Board for approval and adoption as the final disposition of the First Amended
28

1 Accusation against RxChange Co. only. This Stipulated Surrender of License and Order does not
2 apply to Srбуhi Tonelyan.

3 PARTIES

4 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
5 (Board). She brought this action solely in her official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Nancy A. Kaiser, Deputy
7 Attorney General.

8 2. RxChange Co. (Respondent) is represented in this proceeding by attorney David
9 Gurnick, whose address is Lewitt Hackman, 16633 Ventura Blvd. #1100, Encino, CA 91436.

10 3. On or about August 19, 2011, the Board of Pharmacy issued Wholesale Permit
11 Number WLS 5795 to Nuline Pharmaceuticals (now known as RxChange Co.), which was
12 located at 434 West Broadway, Glendale, CA 91204, with Stephen M. Costa, as owner and
13 President, and Srбуhi Tonelyan, as Designated Representative-in-Charge (Respondent). On or
14 about August 1, 2012, Respondent changed its address of record with the Board from 434 West
15 Broadway, Glendale, CA 91204 to 2545 N. Ontario St, Burbank, CA 91504. On or about March
16 8, 2013, Nuline Pharmaceuticals changed its trade style name to RxChange Co. with the Board.
17 Srбуhi Tonelyan is and has been the Designated Representative-in-Charge (DRIC) of Respondent
18 since August 19, 2011. Stephen M. Costa is and has been the President of Respondent since
19 August 19, 2011. Mohammad M. Salemi is and has been a Director of Respondent since July 8,
20 2013. Wholesale Permit number WLS 5795 was in full force and effect at all times relevant to the
21 charges brought in the First Amended Accusation No. 5636 and will expire on August 1, 2017,
22 unless renewed.

23 JURISDICTION

24 4. First Amended Accusation No. 5636 was filed before the Board and is currently
25 pending against Respondent. The Accusation and all other statutorily required documents were
26 properly served on Respondent on April 6, 2016, and was subsequently amended and served on
27 Respondent. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of
28 First Amended Accusation No. 5636 is attached as Exhibit A and is incorporated by reference.

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6. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against it; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

CULPABILITY

9. Respondent understands that by signing this stipulation, Respondent enables the Board to issue an order accepting the surrender of its Wholesale Permit without further process.

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender of License and Order shall be of no force or effect, except for this

1 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
2 be disqualified from further action by having considered this matter.

3 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Surrender of License and Order, including Portable Document Format
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

6 12. This Stipulated Surrender of License and Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of its agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
10 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
11 executed by an authorized representative of each of the parties.

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

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ORDER

IT IS HEREBY ORDERED that Wholesale Permit No. WLS 5795, issued to RxChange Co. (Respondent), with Stephen M. Costa as owner and President, is surrendered and accepted by the Board of Pharmacy.

1. Respondent owner surrenders Wholesale Permit No. WLS 5795 as of the effective date of this decision. Respondent owner shall relinquish the premises wall license and renewal license to the Board within ten (10) days of the effective date of this decision.

2. The surrender of Respondent's license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This decision constitutes a record of discipline and shall become a part of Respondent's license history with the Board.

3. Respondent owner shall, within ten (10) days of the effective date, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board of all controlled substances and dangerous drugs and devices. Respondent owner shall further provide written proof of such disposition and submit a completed Discontinuance of Business form according to Board guidelines.

4. Respondent owner understands and agrees that if he ever files an application for a licensed premises or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure.

5. Respondent owner may not reapply for any license from the Board for three (3) years from the effective date of this decision. Respondent owner stipulates that should he apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the First Amended Accusation shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board. Respondent is required to report this surrender as disciplinary action.

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1 6. Respondent RxChange Co. and Respondent owner (Costa) further stipulate that they
2 shall reimburse the Board for its costs of investigation and prosecution in the amount of fifteen
3 thousand dollars (\$15,000); fifty percent (50%) of the costs to be paid within sixty (60) days of
4 the effective date of this decision and the remaining fifty percent (50%) to be paid upon
5 reapplication. Respondent RxChange Co. and Respondent owner (Costa) shall be jointly and
6 severally liable for the payment of these costs.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Surrender of License and Order re: RxChange
9 Co. only and have fully discussed it with my attorney, David Gurnick. I understand the
10 stipulation and the effect it will have on my Wholesale Permit. I enter into this Stipulated
11 Surrender of License and Order re: RxChange Co. only voluntarily, knowingly, and intelligently,
12 and agree to be bound by the Decision and Order of the Board of Pharmacy.

13
14 DATED: 5-12-2017


RXCHANGE CO.

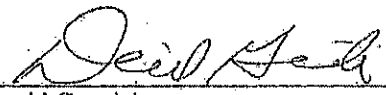
By: Stephen Costa

Its: President

Respondent

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19 I have read and fully discussed with Respondent RxChange Co. the terms and conditions
20 and other matters contained in this Stipulated Surrender of License and Order re: RxChange Co.
21 only. I approve its form and content.

22 DATED: 5-19-17


David Gurnick
Attorney for Respondent

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Consumer Affairs.

Respectfully submitted,

7 Kaiser

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Exhibit A

First Amended Accusation No. 5636

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 NANCY A. KAISER

Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804
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and **DRIC SRBUHI TONELYAN**
2545 N. Ontario Street
15 Burbank, CA 91504

FIRST AMENDED ACCUSATION

16 Wholesale Permit No. WLS 5795

17 and

18 **SRBUHI TONELYAN**
219 E. Garfield Avenue., #4
19 Glendale, CA 91205

20 Certificate Number EXC 18823

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
25 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
26 Affairs.
27
28

1 2. On or about August 19, 2011, the Board of Pharmacy issued Wholesale Permit
2 Number WLS 5795 to Nuline Pharmaceuticals (now known as RxChange Co.), which was
3 located at 434 West Broadway, Glendale, CA 91204, with Stephen M. Costa, as owner and
4 President, and Srбуhi Tonelyan, as Designated Representative-in-Charge (Respondent
5 Wholesaler). On or about August 1, 2012, Respondent Wholesaler (WLS 5795) changed its
6 address of record with the Board from 434 West Broadway, Glendale, CA 91204 to 2545 N.
7 Ontario St, Burbank, CA 91504. On or about March 8, 2013, Nuline Pharmaceuticals changed its
8 trade style name to RxChange Co. with the Board. Srбуhi Tonelyan is and has been the
9 Designated Representative-in-Charge (DRIC) of Respondent Wholesaler since August 19, 2011.
10 Stephen M. Costa is and has been the President of Respondent Wholesaler since August 19, 2011.
11 Mohammad M. Salemi is and has been a Director of Respondent Wholesaler since July 15, 2013.
12 Wholesale Permit number WLS 5795 was in full force and effect at all times relevant to the
13 charges brought herein and will expire on August 1, 2016, unless renewed.

14 3. On or about September 24, 2006, the Board of Pharmacy issued original Certificate
15 Number EXC 18823 to Srбуhi Tonelyan to act as a Designated Representative-in-Charge
16 (Respondent Tonelyan).¹ The license was in full force and effect at all times relevant to the
17 charges brought herein and will expire on September 1, 2016, unless renewed.

18 JURISDICTION

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

22 5. Section 480 of the Code states:

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

25
26 ¹ On or about October 16, 2006, the Board issued Wholesale Permit Number WLS 4964 to
27 Nuline Pharmaceuticals, located at 434 West Broadway, Glendale, CA 91204. Respondent
28 Tonelyan was Designated Representative-in-Charge for WLS 4964. On or about August 19,
2011, there was a change of ownership of the business and WLS 4964 was canceled.

1 (1) Been convicted of a crime. A conviction within the meaning of this section means
2 a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
3 board is permitted to take following the establishment of a conviction may be taken when the time
4 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
5 order granting probation is made suspending the imposition of sentence, irrespective of a
6 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

7 (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
8 benefit himself or herself or another, or substantially injure another.

9 (3)(A). Done any act that if done by a licensee of the business or profession in
10 question, would be grounds for suspension or revocation of license.

11 (B) The board may deny a license pursuant to this subdivision only if the crime or
12 act is substantially related to the qualifications, functions, or duties of the business or profession
13 for which application is made.

14 "(b) Notwithstanding any other provision of this code, a person shall not be denied a
15 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
16 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
17 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
18 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
19 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
20 Section 482.

21 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
22 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
23 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
24 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
25 of the dismissal.

26 "(d) A board may deny a license regulated by this code on the ground that the applicant
27 knowingly made a false statement of fact that is required to be revealed in the application for the
28 license."

1 6. Section 4300 of the Code provides, in part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 7. Section 4300.1 of the Code states:

4 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
5 operation of law or by order or decision of the board or a court of law, the placement of a license
6 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
7 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
8 proceeding against, the licensee or to render a decision suspending or revoking the license."

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

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

13 ...
14 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
16 whether the act is a felony or misdemeanor or not.

17 ...
18 (g) Knowingly making or signing any certificate or other document that falsely represents
19 the existence or nonexistence of a state of facts.

20 ...
21 (j) The violation of any of the statutes of this state, of any other state, or of the United
22 States regulating controlled substances and dangerous drugs.

23 ...
24 (l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
4 dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

13
14 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.

18 (p) Actions or conduct that would have warranted denial of a license."

19 9. Section 4302 of the Code states:

20 "The board may deny, suspend, or revoke any license of a corporation where conditions
21 exist in relation to any person holding 10 percent or more of the corporate stock of the
22 corporation, or where conditions exist in relation to any officer or director of the corporation that
23 would constitute grounds for disciplinary action against a licensee."

24 10. Section 4307, subdivision (a), of the Code states, in pertinent part:

25 "Any person who has been denied a license or whose license has been revoked or is
26 under suspension, or who has failed to renew his or her license while it was under suspension, or
27 who has been a manager, administrator, owner, member, officer, director, associate, or partner of
28 any partnership, corporation, firm, or association whose application for a license has been denied

1 or revoked, is under suspension or has been placed on probation, and while acting as the manager,
2 administrator, owner, member, officer, director, associate, or partner had knowledge of or
3 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
4 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
5 member, officer, director, associate, or partner of a licensee as follows:

6 (1) Where a probationary license is issued or where an existing license is placed on
7 probation, this prohibition shall remain in effect for a period not to exceed five years.

8 (2) Where the license is denied or revoked, the prohibition shall continue until the
9 license is issued or reinstated."

10 11. Section 4022 of the Code states

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

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

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

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

20 12. Section 4059 of the Code states, in part:

21 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
22 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
23 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
25 3640.7.

26 "(b) This section does not apply to the furnishing of any dangerous drug or dangerous
27 device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist,
28 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a

laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied."

13. Section 4081 of the Code states, in 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 any 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."

14. Section 4105 of the Code states, in part:

"(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

"(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

///

1 “(f) When requested by an authorized officer of the law or by an authorized representative
2 of the board, the owner, corporate officer, or manager of an entity licensed by the board shall
3 provide the board with the requested records within three business days of the time the request
4 was made...”

5 15. Section 4160 of the Code states, in part:

6 “(a) A person shall not act as a wholesaler or third-party logistics provider of any dangerous
7 drug or dangerous device unless he or she has obtained a license from the board.

8 ...
9 “(c) (1) A separate license shall be required for each place of business owned or operated by
10 a wholesaler or third-party logistics provider. Each place of business may only be issued a single
11 license by the board, except as provided in paragraph (2). Each license shall be renewed annually
12 and shall not be transferable.

13 ...
14 “(d) Every wholesaler shall be supervised or managed by a designated representative-in-
15 charge. The designated representative-in-charge shall be responsible for the wholesaler's
16 compliance with state and federal laws governing wholesalers.”

17 16. Section 4163 of the Code states, in part:

18 “(a) A manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous
19 drug or dangerous device to an unauthorized person.

20 “(b) Dangerous drugs or dangerous devices shall be acquired from a person authorized by
21 law to possess or furnish dangerous drugs or dangerous devices. When the person acquiring the
22 dangerous drugs or dangerous devices is a wholesaler, the obligation of the wholesaler shall be
23 limited to obtaining confirmation of licensure of those sources from whom it has not previously
24 acquired dangerous drugs or dangerous devices.”

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1 17. Section 4163.1 of the Code² states:

2 "It is the intent of the Legislature that commencing on January 1, 2007, and continuing
3 through the full implementation of the pedigree requirements specified by Section 4163,
4 manufacturers and wholesalers shall use best efforts to provide in the most readily accessible form
5 possible, information regarding the manufacturer's specific relationships in the distribution of
6 dangerous drugs with wholesalers."

7 18. Section 4169 of the Code states, in part:

8 "(a) A person or entity shall not do any of the following:

9 (1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous drugs or dangerous
10 devices at wholesale with a person or entity that is not licensed with the board as a wholesaler,
11 third-party logistics provider, or pharmacy.

12 ...

13 (5) Fail to maintain records of the acquisition or disposition of dangerous drugs or
14 dangerous devices for at least three years."

15 REGULATIONS

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

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

23 20. California Code of Regulations, title 16, section 1718, states:

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

27 _____
28 ² Section 4163.1 was repealed as of January 1, 2015.

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

3 **FEDERAL REGULATIONS**

4 21. Code of Federal Regulations, title 21, section 1301.11, subdivision (a) states:

5 "Every person who manufactures, distributes, dispenses, imports, or exports any controlled
6 substance or who proposes to engage in the manufacture, distribution, dispensing, importation or
7 exportation of any controlled substance shall obtain a registration [with the U.S. Drug
8 Enforcement Administration (DEA)] unless exempted by law or pursuant to §§ 1301.22 through
9 1301.26."

10 22. Code of Federal Regulations, title 21, section 1301.12, subdivision (a) states:

11 "A separate registration is required for each principal place of business or professional
12 practice at one general physical location where controlled substances are manufactured,
13 distributed, imported, exported, or dispensed by a person."

14 **COST RECOVERY**

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

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24. **DRUG CLASSIFICATIONS**

Generic Name	Dangerous Drug Per Bus. & Prof. Code § 4022	Scheduled Drug per Health & Safety Code (HSC)	Indications For Use
Carisoprodol ³ (brand name, Soma)	Yes	Not scheduled in California. Carisoprodol is a Schedule IV under federal law per 21 CFR 1308.14(c)(6).	Muscle relaxant
Hydrocodone/ Acetaminophen (APAP) (brand names include Norco, Vicodin, and Lorcet)	Yes	Schedule II Per HSC § 11055(b)(1)	Pain
Lorazepam (brand name, Ativan)	Yes	Schedule IV Per HSC § 1057(d)(16)	Anxiety
Zolpidem (non-barbiturate, non- benzodiazepine sedative hypnotic) (brand name, Ambien)	Yes	Schedule IV Per HSC § 1057(d)(32)	Insomnia

FACTUAL SUMMARY

25. On or about November 14, 2013, a Board inspector conducted a routine inspection of Respondent Wholesaler's facility, located at 2545 N. Ontario St., Burbank, CA 91504. The inspection revealed that Respondent Wholesaler was purchasing dangerous drugs, including controlled substances, from an unlicensed wholesaler broker, SCT RX Health, 1500 Walnut St. Philadelphia, PA 19102 (SCT RX Health). At times those purchases were being ordered from and delivered to an unlicensed premises in California.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Record-Keeping Requirements)

26. Respondent Wholesaler and Respondent Tonelyan are subject to disciplinary action under Section 4301, subdivisions (j) and (o), for violating sections 4081, subsection (a), and 4105 and Californian Code of Regulations, title 16, section 1718, in that, while Respondent Tonelyan was serving as the DRIC, Respondent Wholesaler failed to have all records of acquisition of all

³ Drug abusers are known to combine Soma with hydrocodone to produce similar effects to those of Heroin.

1 dangerous drugs open for inspection and preserved for at least three years from the making and
2 failed to maintain complete accountability for all dangerous drugs.

3 a. During November 14, 2013, inspection, Respondents provided the inspector with
4 partial copies of purchase orders of dangerous drugs. Specifically, Respondent Wholesaler's
5 Purchase Order #700002335, dated July 19, 2012, refers to invoice # 54325-05 from SCT RX
6 Health, dated July 16, 2012, but the purchase order does not match the related invoice. Invoice
7 #54325-05 documents an order of 25 x 1000 famotidine 20mg and 50 x 500 hydrocodone/apap
8 5/500mg, but the purchase order does not list famotidine or hydrocodone. Also, the bottom of the
9 purchase order document says "continued" and there is no dollar total on the document.
10 Respondent Wholesaler either did not retain or have the complete record available for review by
11 the Board's inspector.

12 SECOND CAUSE FOR DISCIPLINE

13 (Purchasing from Unlicensed Wholesaler)

14 27. Respondent Wholesaler and Respondent Tonelyan are subject to disciplinary action
15 under Section 4301, subdivision (j), for violating Section 4169, subdivision (a)(1), in that, while
16 Respondent Tonelyan was serving as the DRIC, Respondent Wholesaler purchased controlled
17 substances and/or dangerous drugs from SCT RX Health, an entity that is not licensed with the
18 board as a wholesaler, third-party logistics provider, or pharmacy. The purchases are documented
19 by the following invoices:

20 a. Invoice #54325-01, dated June 18, 2012, documented Respondent Wholesaler's
21 purchase of 48 x 5000 fluoxetine 20mg from SCT RX Health.

22 b. Invoice #54325-02, dated June 21, 2012, documented Respondent Wholesaler's
23 purchase of 50 x 1000 carisprodol 350mg from SCT RX Health.

24 c. Invoice #54325-03, dated June 26, 2012, documented Respondent Wholesaler's
25 purchase of 10 x 500 hydrocodone/apap 10/325 and 10 x 500 hydrocodone/apap 10/650,
26 meloxicam and Baclofen from SCT RX Health.

27 d. Invoice #54325-04, dated July 10, 2012, documented Respondent Wholesaler's
28 purchase of Baclofen, famotidine, folic acid 1mg, Gabapentin, tramadol, 10 x 500

1 hydrocodone/apap 10/325, 6 x 500 hydrocodone 10/500 and 8 x 500 hydrocodone 7.5/750, from
2 SCT RX Health.

3 e. Invoice #54325-05, dated July 16, 2012, documented Respondent Wholesaler's
4 purchase of famotidine 20mg, citalopram 20mg, azithromycin, Fluoxetine 20mg,
5 hydrochlorothiazide, lisinopril 20mg, lorazepam 1mg, omeprazole and 50 x 500
6 hydrocodone/apap 5/500, from SCT RX Health.

7 f. Invoice #54325-06, dated July 17, 2012, documented Respondent Wholesaler's
8 purchase of 42 x 1000 carisprodol 350mg, from SCT RX Health.

9 g. Invoice #54325-07, dated July 27, 2012, documented Respondent Wholesaler's
10 purchase of baclofen 10mg, 20 x 500 zolpidem 10mg, ranitidine 150mg, ibuprofen 600, folic acid
11 2mg and 40 x 100 hydrocodone/apap 7.5/325, from SCT RX Health.

12 h. Invoice #54325-08, dated August 3, 2012, documented Respondent Wholesaler's
13 purchase of 36 x 500 hydrocodone/apap 10/500, baclofen, famotidine, folic acid, lisinopril,
14 citalopram, ibuprofen and meloxicam, from SCT RX Health.

15 i. Invoice #54325-09, dated August 13, 2012, documented Respondent Wholesaler's
16 purchase of folic acid, ibuprofen, lisinopril, metformin, 17 x 100 hydrocodone 7.5/325 and 60 x
17 500 hydrocodone/apap 7.5/500, from SCT RX Health.

18 j. Invoice #54325-10, dated September 13, 2012, documented Respondent Wholesaler's
19 purchase of azithromycin, baclofen, citalopram, Famotidine, folic acid, furosemide,
20 hydrochlorothiazide, ibuprofen, lisinopril, ranitidine, tramadol, 30 x 100 hydrocodone/apap
21 7.5/325, 30 x 500 hydrocodone/apap 5/500, 24 x 500 hydrocodone 7.5/500 and 20 x 1000
22 carisprodol 350mg, from SCT RX Health.

23 k. Invoice #54325-11, dated September 27, 2012, documented Respondent Wholesaler's
24 purchase of ibuprofen, 6 x 500 hydrocodone/apap 10/325 and 6 x 500 hydrocodone/apap 10/500,
25 from SCT RX Health.

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THIRD CAUSE FOR DISCIPLINE

(Unlicensed Activity)

28. Respondent Wholesaler and Respondent Tonelyan are subject to disciplinary action under Section 4301, subdivision (j), for violating Section 4160, in that, while Respondent Tonelyan was serving as the DRIC, Respondent Wholesaler engaged in unlicensed activity. Section 4160, subdivision (c), provides that a separate license shall be required for each place of business owned or operated by a wholesaler, and that each license shall be renewed annually and shall not be transferable. Specifically, on August 1, 2012, the Board approved a change of location for Respondent Wholesaler from their original address in Glendale, CA to 2545 N. Ontario St., Burbank, CA. Respondent Wholesaler's records show that controlled substances and dangerous drugs were ordered and received by it at the Glendale address after August 1, 2012, as follows:

a. Invoice #54325-08, dated August 3, 2012, documented Respondent Wholesaler's purchase of 36 x 500 hydrocodone /apap 10/500, baclofen, famotidine, folic acid, lisinopril, citalopram, ibuprofen and meloxicam, from SCT RX Health. The invoice indicated that the order was billed to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204 and shipped to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204.

b. Invoice # 54325-09, dated August 13, 2012, documented Respondent Wholesaler's purchase of folic acid, ibuprofen, lisinopril, metformin, 17 x 100 hydrocodone 7.5/325 and 60 x 500 hydrocodone/apap 7.5/500, from SCT RX Health. The invoice indicated that the order was billed to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204 and shipped to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204.

c. Invoice # 54325-10, dated September 13, 2012, documented Respondent Wholesaler's purchase of azithromycin, baclofen, citalopram, famotidine, folic acid, furosemide, hydrochlorothiazide, ibuprofen, lisinopril, ranitidine, tramadol, 30 x 100 hydrocodone/apap 7.5/325, 30 x 500 hydrocodone/apap 5/500, 24 x 500 hydrocodone 7.5/500 and 20 x 1000 carisprodol 350mg, from SCT RX Health. The invoice indicated that the order was billed to:

1 Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204 and shipped to Respondent
2 Wholesaler at 434 West Broadway, Glendale, CA 91204.

3 d. Invoice # 54325-11, dated September 27, 2012, documented Respondent
4 Wholesaler's purchase of ibuprofen, 6 x 500 hydrocodone/apap 10/325 and 6 x 500
5 hydrocodone/apap 10/500, from SCT RX Health. The invoice indicated that the order was billed
6 to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204 and shipped to
7 Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unregistered Activity)**

10 29. Respondent Wholesaler and Respondent Tonelyan are subject to disciplinary action
11 under Section 4301, subdivision (c), for violating Code of Federal Regulations, title 21, section
12 1301.11, subdivision (a), in that, while Respondent Tonelyan was serving as the DRIC,
13 Respondent Wholesaler ordered and received controlled substances without a valid DEA
14 registration. In order for a wholesaler's place of business to be registered with the DEA, it must be
15 licensed by the entity's home state.⁴ Specifically, on August 1, 2012, Respondent Wholesaler
16 changed its address with the Board from 434 West Broadway, Glendale, CA 91204 to 2545 N.
17 Ontario Street, Burbank, CA 91504 and did not notify the DEA of its change of address.
18 Therefore, Respondent Wholesaler's DEA registration was considered invalid at the Glendale
19 location, because Respondent Wholesaler no longer had a California wholesaler's license for that
20 location, and Respondent Wholesaler was not registered with the DEA at the Burbank location, as
21 it failed to notify the DEA of its change of address. Respondent Wholesaler's orders and
22 deliveries of controlled substances that were made without a valid DEA registration are
23 documented in the following invoices:

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27 ⁴ See 21 U.S.C., §823 (DEA registration requirements for distributors of controlled
28 substances).

1 a. Invoice #54325-08, dated August 3, 2012, documented Respondent Wholesaler's
2 purchase of 36 x 500 hydrocodone /apap 10/500 from SCT Rx Health. The invoice provided that
3 the order was billed to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204 and
4 shipped to Respondent Wholesaler at 434 West Broadway, Glendale, CA 91204.

5 b. Invoice #54325-09, dated August 13, 2012, documented Respondent Wholesaler's
6 purchase of 17 x 100 hydrocodone 7.5/325 and 60 x 500 hydrocodone/apap 7.5/500 from SCT Rx
7 Health. The invoice provided that the order was to be billed and shipped to Nuline
8 Pharmaceuticals, 434 West Broadway, Glendale, CA 91204.

9 c. Invoice # 54325-10, dated September 13, 2012, documented Respondent
10 Wholesaler's purchase of 30 x 100 hydrocodone/apap 7.5/325, 30 x 500 hydrocodone/apap 5/500,
11 24 x 500 hydrocodone 7.5/500 and 20 x 1000 carisprodol 350mg, from SCT Rx Health. The
12 invoice provided that the order was billed and shipped to Respondent Wholesaler at 434 West
13 Broadway, Glendale, CA 91204.

14 d. Invoice #54325-11, dated September 27, 2012, documented Respondent Wholesaler's
15 purchase of ibuprofen, 6 x 500 hydrocodone/apap 10/325 and 6 x 500 hydrocodone/apap 10/500,
16 from SCT Rx Health. The invoice provided that the order was billed and shipped to Respondent
17 Wholesaler at 434 West Broadway, Glendale, CA 91204.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Sale Pedigree Requirements)**

20 30. Respondent Wholesaler and Respondent Tonelyan are subject to disciplinary action
21 under Section 4301, subdivision (j), for violating Section 4163.1, in that they failed to provide in
22 readily accessible form information regarding the manufacturer's specific relationships in the
23 distribution of dangerous drugs. Specifically, Nuline, 2545 N. Ontario St., Burbank, CA 91504
24 sold dangerous drugs to pharmacies and other wholesalers and did not provide pedigrees to the
25 following:

26 a. Invoice # 7245, dated August 1, 2013, to South East Coast Enterprises, located at 105
27 Central Ave., Goose Creek, SC 29445, was on a Nuline Pharmaceuticals invoice, 2545 N. Ontario
28 St., Burbank, CA 91504 with DEA# RN0419641. No pedigree was provided to customer.

1 b. Invoice# 6664, dated February 12, 2013, to DNA Pharmacy, 9419 Mesa Rd. Houston,
2 TX 77028 was on a Nuline Pharmaceuticals invoice, 2545 N. Ontario St., Burbank, CA 91504
3 with DEA# RN0419641. No pedigree was provided to customer.

4 c. Invoice # 7114, dated June 27, 2013, to Garden Grove Community Pharmacy located
5 at 12665 Garden Grove Blvd., Garden Grove, CA 92843 was on a Nuline Pharmaceuticals
6 invoice, 2545 N. Ontario St., Burbank, CA 91504 with DEA# RN0419641. No pedigree was
7 provided to customer.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failure to Ensure Compliance)**

10 31. Respondent Tonelyan is subject to disciplinary action under Section 4301,
11 subdivision (j), for violating Section 4160, subdivision (d), in that she failed to ensure Respondent
12 Wholesaler's compliance with state laws governing wholesalers. Complainant refers to, and by
13 this reference incorporates, the allegations set forth above in paragraphs 25 through 30, as though
14 set forth fully herein.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Conviction of a Substantially Related Crime)**

17 32. Respondent Wholesaler is subject to disciplinary action under sections 4301,
18 subdivisions (l) and (o), and 4302, in conjunction with California Code of Regulations, title 16,
19 section 1770, on the grounds of unprofessional conduct, in that Stephen M. Costa, the president
20 and owner of Respondent RxChange Co., committed a substantially related crime, as follows:

21 a. On or about April 20, 2016, after a plea of guilty, Stephen M. Costa (Costa) was
22 convicted of violating Title 18, United States Code, Section 1349 (conspiracy to commit
23 healthcare fraud), a felony, in the criminal proceeding entitled *U.S.A. v. Stephen M. Costa* (S.D.
24 Florida, 2013, Case No. 1:15-cr-21004-CMA-1). On or about April 20, 2016, the Court
25 sentenced Costa to 35 months in federal prison, followed by 3 years of supervised release, and
26 ordered him to pay \$1,200,000 in restitution to Medicaid and a \$10,000 fine.

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1 b. The circumstances underlying the conviction are as follows:

2 i. During the charged conspiracy, from in or about September 2008, through December
3 2013, Respondent's co-conspirators obtained quantities of expensive medicines such as those
4 used to treat asthma, psychiatric symptoms and HIV infections by buying them from purported
5 patients who had obtained them from retail pharmacies in New York City as Medicaid
6 beneficiaries. These medicines were aggregated into quantities by co-conspirators, and Costa then
7 purchased them in quantity.

8 ii. With Costa's knowledge, to make the medicines re-marketable, the pharmacy labels
9 with the patients' identities were removed, and the bottles were cleaned to make them appear new
10 instead of having been previously dispensed. Costa incorporated and used wholesale distribution
11 companies to sell the second-hand prescription drugs to pharmacies. As part of the scheme,
12 Costa's co-conspirators created fraudulent documentation to falsely show the medicines bought
13 on the streets from individuals were, instead, new medicines being shipped through legitimate
14 pharmaceutical distributors and kept in properly controlled conditions.

15 iii. Some of the pharmacies did not know they were receiving illegally obtained, second-
16 hand medicines. Medicaid reimbursed various pharmacies for the sales of such medicines to
17 patients which the Medicaid program would not have done, had the nature of the medicines as
18 repurchased and relabeled been known.

19 iv. During the course of this scheme, the value of the pharmaceuticals involved in
20 Costa's illegal transactions was approximately \$1.2 million. Payments for these medicines
21 ultimately came from funds provided to the Medicaid program for the purpose of providing
22 medicines to low income patients.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, fraud, or deceit)**

25 33. Respondent Wholesaler is subject to disciplinary action under Sections 4301,
26 subsection (f), and 4302, of the Code, in that Costa committed dishonesty, fraud, or deceit by
27 conspiring to commit healthcare fraud. Complainant refers to, and by this reference incorporates,
28 the allegations set forth above in paragraph 32, as though set forth fully herein.

1 **NINTH CAUSE FOR DISCIPLINE**

2 (Acts warranting denial of a license)

3 34. Respondent Wholesaler is subject to disciplinary action under section 4301,
4 subsection (p), of the Code, in conjunction with section 480, subdivisions (a)(1), (2), and (3), in
5 that Costa engaged in conduct that would have warranted denial of a license, as more fully set
6 forth in paragraphs 32 and 33, above.

7 **OTHER MATTERS**

8 35. Pursuant to Code section 4307, if discipline is imposed on Wholesale Permit
9 Number WLS 5795 issued to Respondent Pharmacy while Stephen M. Costa has been an officer
10 and owner and had knowledge of or knowingly participated in any conduct for which the licensee
11 was disciplined, Stephen M. Costa shall be prohibited from serving as a manager, administrator,
12 owner, member, officer, director, associate, or partner of a licensee for five years if Wholesale
13 Permit Number WLS 5795 is placed on probation or until Wholesale Permit Number WLS 5795
14 is reinstated if it is revoked.

15 36. Pursuant to Code section 4307, if discipline is imposed on Wholesale Permit
16 Number WLS 5795 issued to Respondent Wholesaler while Mohammad M. Salemi has been an
17 officer and/or owner and had knowledge of or knowingly participated in any conduct for which
18 the licensee was disciplined, Mohammad M. Salemi shall be prohibited from serving as a
19 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
20 five years if Wholesale Permit Number WLS 5795 is placed on probation or until Wholesale
21 Permit Number WLS 5795 is reinstated if it is revoked.

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PRAYER

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

1. Revoking or suspending Wholesale Permit Number WLS 5795 issued to RxChange Co.;

2. Revoking or suspending Certificate Number EXC 18823 issued to Srбуhi Tonelyan;

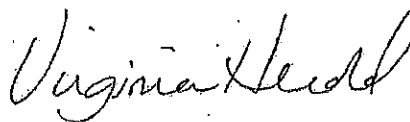
3. Prohibiting Stephen M. Costa from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Wholesale Permit Number WLS 5795 is placed on probation or until Wholesale Permit Number WLS 5795 is reinstated, as applicable, if Wholesale Permit Number WLS 5795 issued to RxChange Co. is revoked;

4. Prohibiting Mohammad M. Salemi from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Wholesale Permit Number WLS 5795 is placed on probation or until Wholesale Permit Number WLS 5795 is reinstated, as applicable, if Wholesale Permit Number WLS 5795 issued to RxChange Co. is revoked;

5. Ordering RxChange Co. and Srбуhi Tonelyan 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;

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

DATED: 11/16/16



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

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