

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

In the Matter of the Accusation Against:

**THOMAS STEVEN ROGERS
20291 Rim Rock Court
Foresthill, CA 95631**

Pharmacist License No. RPH 30137

Respondent.

Case No. 5745

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
THOMAS STEVEN ROGERS**

DECISION AND ORDER

The attached Stipulated Settlement 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 June 30, 2017.

It is so ORDERED on May 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 JANICE K. LACHMAN
Supervising Deputy Attorney General
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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 Accusation Against:

Case No. 5745

13 **THOMAS STEVEN ROGERS**
20291 Rim Rock Court
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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
THOMAS STEVEN ROGERS**

14 **Pharmacist License No. RPH 30137**

15 Respondent.

16
17 **IT IS STIPULATED AND AGREED** by and between the parties to the above-entitled
18 proceedings that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
21 (Board). She brought this action solely in her official capacity and is represented in this matter by
22 Xavier Becerra, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy
23 Attorney General.

24 2. Respondent Thomas Steven Rogers (Respondent) is represented in this proceeding by
25 attorney Gregory Matzen, whose address is: 2104 Big Sandy Court, Gold River, CA, 95670.

26 3. On or about May 4, 1976, the Board issued Pharmacist License No. RPH 30137 to
27 Thomas Steven Rogers (Respondent). The Pharmacist License was in full force and effect at all
28 times relevant to the charges brought in Accusation No. 5745, and will expire on June 30, 2017,

1 unless renewed.

2 **JURISDICTION**

3 4. Accusation No. 5745 was filed before the Board, and is currently pending against
4 Respondent. The Accusation and all other statutorily required documents were properly served
5 on Respondent on August 23, 2016. Respondent timely filed his Notice of Defense contesting the
6 Accusation.

7 5. A copy of Accusation No. 5745 is attached as exhibit A and incorporated herein by
8 reference.

9 **ADVISEMENT AND WAIVERS**

10 6. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 5745. Respondent has also carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
13 Order.

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

20 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 **CULPABILITY**

23 9. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 5745.

25 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
26 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1 **DISCIPLINARY ORDER**

2 **IT IS ORDERED** that Pharmacist License No. RPH 30137 issued to Respondent Thomas
3 Steven Rogers is revoked. However, the revocation is stayed and Respondent is placed on
4 probation for five (5) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, respondent is suspended from the practice of pharmacy for thirty (30)
7 days beginning the effective date of this decision.

8 During suspension, respondent shall not enter any pharmacy area or any portion of the
9 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
10 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
11 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
12 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
13 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
14 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
15 and devices or controlled substances.

16 Respondent shall not engage in any activity that requires the professional judgment of a
17 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
18 Respondent shall not perform the duties of a pharmacy technician or a designated representative
19 for any entity licensed by the board.

20 Subject to the above restrictions, respondent may continue to own or hold an interest in any
21 licensed premises in which he holds an interest at the time this decision becomes effective unless
22 otherwise specified in this order.

23 Failure to comply with this suspension shall be considered a violation of probation.

24 **2. Tolling of Suspension**

25 During the suspension, respondent shall not leave California for any period exceeding ten
26 (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10)
27 days during the suspension shall be considered a violation of probation. Moreover, any absence
28 from California during the suspension exceeding ten (10) days shall toll the suspension, i.e., the

1 suspension shall be extended by one day for each day over ten (10) days. During any such period
2 of tolling, respondent must nonetheless comply with all terms and conditions of probation.

3 Respondent must notify the board in writing within ten (10) days of departure, and must
4 further notify the board in writing within ten (10) days of return. Failure to provide such
5 notification(s) shall constitute a violation of probation. Upon such departure and return,
6 respondent shall not resume the practice of pharmacy until notified by the board that the period of
7 suspension has been satisfactorily completed.

8 3. Obey All Laws

9 Respondent shall obey all state and federal laws and regulations.

10 Respondent shall report any of the following occurrences to the board, in writing, within
11 seventy-two (72) hours of such occurrence:

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

22 Failure to timely report such occurrence shall be considered a violation of probation.

23 4. Report to the Board

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **5. Interview with the Board**

5 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
6 with the board or its designee, at such intervals and locations as are determined by the board or its
7 designee. Failure to appear for any scheduled interview without prior notification to board staff,
8 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
9 the period of probation, shall be considered a violation of probation.

10 **6. Cooperate with Board Staff**

11 Respondent shall cooperate with the board's inspection program and with the board's
12 monitoring and investigation of respondent's compliance with the terms and conditions of his
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **7. Continuing Education**

15 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
16 pharmacist as directed by the board or its designee.

17 **8. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 5745 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 5745, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

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1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 5745 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 5745
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 Failure to timely notify present or prospective employer(s) or to cause that/those
13 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
14 probation.

15 "Employment" within the meaning of this provision shall include any full-time,
16 part-time, temporary, relief or pharmacy management service as a pharmacist or any
17 position for which a pharmacist license is a requirement or criterion for employment,
18 whether the respondent is an employee, independent contractor or volunteer.

19 **9. Reimbursement of Board Costs**

20 As a condition precedent to successful completion of probation, respondent shall pay to the
21 board its costs of investigation and prosecution in the amount of \$ 2,799.56. Respondent may
22 make said payments in a payment plan approved by the Board. There shall be no deviation from
23 the payment plan absent prior written approval by the board or its designee. Failure to pay costs
24 by the deadline(s) as directed shall be considered a violation of probation.

25 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
26 reimburse the board its costs of investigation and prosecution.

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1 10. **Probation Monitoring Costs**

2 Respondent shall pay any costs associated with probation monitoring as determined by the
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 11. **Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current license with
8 the board, including any period during which suspension or probation is tolled. Failure to
9 maintain an active, current license shall be considered a violation of probation.

10 If respondent's license expires or is cancelled by operation of law or otherwise at any time
11 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
12 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
13 probation not previously satisfied.

14 12. **License Surrender While on Probation/Suspension**

15 Following the effective date of this decision, should respondent cease practice due to
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
17 respondent may tender his license to the board for surrender. The board or its designee shall have
18 the discretion whether to grant the request for surrender or take any other action it deems
19 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
20 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
21 record of discipline and shall become a part of the respondent's license history with the board.

22 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
23 the board within ten (10) days of notification by the board that the surrender is accepted.

24 Respondent may not reapply for any license from the board for three (3) years from the effective
25 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
26 of the date the application for that license is submitted to the board, including any outstanding
27 costs.

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1 13. **Notification of a Change in Name, Residence Address, Mailing**
2 **Address or Employment**

3 Respondent shall notify the board in writing within ten (10) days of any change of
4 employment. Said notification shall include the reasons for leaving, the address of the new
5 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
6 shall further notify the board in writing within ten (10) days of a change in name, residence
7 address, mailing address, or phone number.

8 Failure to timely notify the board of any change in employer(s), name(s), address (es), or
9 phone number(s) shall be considered a violation of probation.

10 14. **Tolling of Probation**

11 Except during periods of suspension, respondent shall, at all times while on probation, be
12 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
13 Any month during which this minimum is not met shall toll the period of probation, i.e., the
14 period of probation shall be extended by one month for each month during which this minimum is
15 not met. During any such period of tolling of probation, respondent must nonetheless comply
16 with all terms and conditions of probation.

17 Should respondent, regardless of residency, for any reason (including vacation) cease
18 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
19 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
20 must further notify the board in writing within ten (10) days of the resumption of practice. Any
21 failure to provide such notification(s) shall be considered a violation of probation.

22 It is a violation of probation for respondent's probation to remain tolled pursuant to the
23 provisions of this condition for a total period, counting consecutive and non-consecutive months,
24 exceeding thirty-six (36) months.

25 "Cessation of practice" means any calendar month during which respondent is not
26 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions
27 Code section 4000 et seq . "Resumption of practice" means any calendar month during
28 which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as

1 defined by Business and Professions Code section 4000 et seq.

2 **15. Violation of Probation**

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

8 If respondent violates probation in any respect, the board, after giving respondent notice
9 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
10 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
11 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
12 a petition to revoke probation or an accusation is filed against respondent during probation, the
13 board shall have continuing jurisdiction and the period of probation shall be automatically
14 extended until the petition to revoke probation or accusation is heard and decided.

15 **16. Completion of Probation**

16 Upon written notice by the board or its designee indicating successful completion of
17 probation, respondent's license will be fully restored.

18 **17. No Ownership of Licensed Premises**

19 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
20 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
21 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
22 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
23 days following the effective date of this decision and shall immediately thereafter provide written
24 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
25 documentation thereof shall be considered a violation of probation.

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1 **18. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**
2 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

3 During the period of probation, respondent shall not supervise any intern pharmacist, be the
4 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
5 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
6 unauthorized supervision responsibilities shall be considered a violation of probation.

7 **19. Remedial Education**

8 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
9 board or its designee, for prior approval, an appropriate program of remedial education related to
10 inventory control, pharmacy law, and pharmacy operations. The program of remedial education
11 shall consist of at least 30 hours total, that shall include a minimum of six (6) hours per year for
12 each year of probation, which shall be completed at respondent's own expense. All remedial
13 education shall be in addition to, and shall not be credited toward, continuing education (CE)
14 courses used for license renewal purposes.

15 Failure to timely submit or complete the approved remedial education shall be considered a
16 violation of probation. The period of probation will be automatically extended until such
17 remedial education is successfully completed and written proof, in a form acceptable to the board,
18 is provided to the board or its designee.

19 Following the completion of each course, the board or its designee may require the
20 respondent, at his own expense, to take an approved examination to test the respondent's
21 knowledge of the course. If the respondent does not achieve a passing score on the examination,
22 this failure shall be considered a violation of probation. Any such examination failure shall
23 require respondent to take another course approved by the board in the same subject area.

24 **20. Ethics Course**

25 Within sixty (60) days of the effective date of this decision, respondent shall enroll in a
26 course in ethics, at respondent's expense, approved in advance by the board or its designee.

27 Failure to initiate the course during the first year of probation, and complete it within the second
28 year of probation, is a violation of probation. Respondent shall submit a certificate of completion

1 to the board or its designee within five days after completing the course.

2 21. **Supervised Practice**

3 During the period of probation, respondent shall practice only under the supervision of a
4 licensed pharmacist not on probation with the board. Upon and after the effective date of this
5 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
6 until a supervisor is approved by the board or its designee. The supervision shall be, as required
7 by the board or its designee, either:

8 Continuous – At least 75% of a work week

9 Substantial - At least 50% of a work week

10 Partial - At least 25% of a work week

11 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

12 Within thirty (30) days of the effective date of this decision, respondent shall have his
13 supervisor submit notification to the board in writing stating that the supervisor has read the
14 decision in case number 5745 and is familiar with the required level of supervision as determined
15 by the board or its designee. It shall be the respondent's responsibility to ensure that his
16 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
17 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
18 acknowledgements to the board shall be considered a violation of probation.

19 If respondent changes employment, it shall be the respondent's responsibility to ensure that
20 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
21 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
22 commences, submit notification to the board in writing stating the direct supervisor and
23 pharmacist-in-charge have read the decision in case number 5745 and is familiar with the level of
24 supervision as determined by the board. Respondent shall not practice pharmacy and his license
25 shall be automatically suspended until the board or its designee approves a new supervisor.
26 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
27 acknowledgements to the board shall be considered a violation of probation.

28 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

1 During suspension, respondent shall not enter any pharmacy area or any portion of the
2 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
3 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
4 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
5 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
6 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
7 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
8 and controlled substances. Respondent shall not resume practice until notified by the board.

9 During suspension, respondent shall not engage in any activity that requires the
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
12 designated representative for any entity licensed by the board.

13 Subject to the above restrictions, respondent may continue to own or hold an interest in any
14 licensed premises in which he holds an interest at the time this decision becomes effective unless
15 otherwise specified in this order:

16 Failure to comply with this suspension shall be considered a violation of probation.

17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Gregory Matzen. I understand the stipulation and the effect it will
20 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
21 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
22 Board of Pharmacy.

23
24 DATED: 2/4/2017

Thomas Steven Rogers
THOMAS STEVEN ROGERS
Respondent

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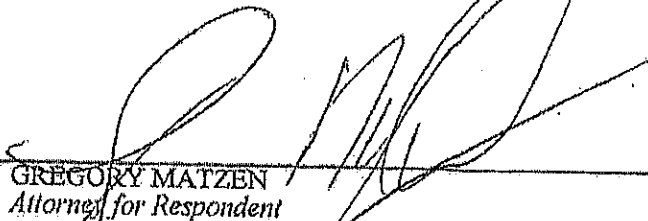
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I have read and fully discussed with Respondent Thomas Steven Rogers the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/3/17

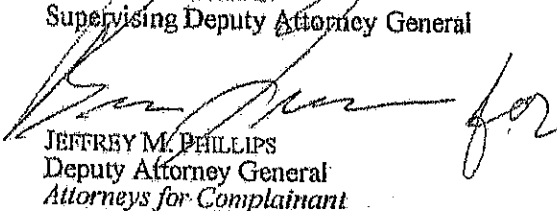

GREGORY MATZEN
Attorney for Respondent

ENDORSEMENT

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

Dated: 2/6/17

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


JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

SA2016100465
Stipulation.rtf

Exhibit A

Accusation No. 5745

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Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5745

12 **PACIFIC WEST PHARMACY, INC.**
13 **ARTHUR C. WHITNEY, PRES./SHAREHOLDER**
14 **HELEN S. WHITNEY, SEC./TREAS./SHAREHOLDER**
15 **HORIZON WEST, INC., SHAREHOLDER**
16 **TOM ROGERS aka THOMAS STEVEN ROGERS,**
17 **PHARMACIST-IN-CHARGE**
18 **4363 Pacific Street**
19 **Rocklin, CA 95677**

A C C U S A T I O N

20 **Pharmacy Permit No. PHY 40592**

21 **and**

22 **THOMAS STEVEN ROGERS**
23 **20291 Rim Rock Court**
24 **Foresthill, CA 95631**

25 **Pharmacist License No. RPH 30137**

26 Respondents.

27 Complainant alleges:

28 **PARTIES**

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

2. On or about December 16, 1994, the Board issued Pharmacy Permit Number PHY 40592 to Pacific West Pharmacy, Inc. ("Respondent Pacific West Pharmacy" or "Pacific West

1 Pharmacy”), with Arthur C. Whitney as president and 38 percent shareholder, Helen S. Whitney
2 as secretary, treasurer, and 12 percent shareholder, and Horizon West, Inc. as 50 percent
3 shareholder. On or about October 25, 2005, Tom Rogers, also known as Thomas Steven Rogers
4 (“Respondent Rogers” or “PIC Rogers”), became the pharmacist-in-charge. The pharmacy
5 permit was in full force and effect at all times relevant to the charges brought herein and will
6 expire on December 1, 2016, unless renewed.

7 3. On or about May 4, 1976, the Board issued Pharmacist License Number RPH 30137
8 to Respondent Rogers. The pharmacist license was in full force and effect at all times relevant to
9 the charges brought herein and will expire on June 30, 2016, unless renewed.

10 JURISDICTION

11 4. This Accusation is brought before the Board under the authority of the following
12 laws. All section references are to the Business and Professions Code (“Code”) unless otherwise
13 indicated.

14 5. Section 4300 of the Code states, in pertinent part:

15 (a) Every license issued may be suspended or revoked.

16 (b) The board shall discipline the holder of any license issued by the
17 board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

18 (1) Suspending judgment.

19 (2) Placing him or her upon probation.

20 (3) Suspending his or her right to practice for a period not exceeding one
21 year.

22 (4) Revoking his or her license.

23 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper . . .

24 6. Section 4300.1 of the Code states:

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

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STATUTORY AND REGULATORY PROVISIONS

7. 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 . . .

8. Section 4115 of the Code states:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

9. Section 4023.5 of the Code states that "direct supervision and control" means that a pharmacist is on the premises at all times and is fully aware of all activities performed by either a pharmacy technician or intern pharmacist."

10. Title 16, California Code of Regulations, section 1793.2 defines "nondiscretionary tasks," as used in Business and Professions Code section 4115, as:

- (a) removing the drug or drugs from stock;
- (b) counting, pouring, or mixing pharmaceuticals;
- (c) placing the product into a container;
- (d) affixing the label or labels to the container;
- (e) packaging and repackaging.

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1 11. Section 4081 of the Code 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
4 to inspection by authorized officers of the law, and shall be preserved for at least
5 three years from the date of making. A current inventory shall be kept by every
6 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,
7 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or
8 establishment holding a currently valid and unrevoked certificate, license, permit,
9 registration, or exemption under Division 2 (commencing with Section 1200) of the
10 Health and Safety Code or under Part 4 (commencing with Section 16000) of
11 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
12 drugs or dangerous devices.

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

17 12. Section 4105, subdivision (a), of the Code states:

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

21 13. Section 4113, subdivision (c), of the Code states that “[t]he pharmacist-in-charge
22 shall be responsible for a pharmacy's compliance with all state and federal laws and regulations
23 pertaining to the practice of pharmacy.”

24 14. Section 4115 of the Code states, in pertinent part:

25 (a) A pharmacy technician may perform packaging, manipulative,
26 repetitive, or other nondiscretionary tasks, only while assisting, and while under the
27 direct supervision and control of a pharmacist. The pharmacist shall be responsible
28 for the duties performed under his or her supervision by a technician.

....

29 (d) The board shall adopt regulations to specify tasks pursuant to
30 subdivision (a) that a pharmacy technician may perform under the supervision of a
31 pharmacist. Any pharmacy that employs a pharmacy technician shall do so in
32 conformity with the regulations adopted by the board.

....

33 (f)(1) A pharmacy with only one pharmacist shall have no more than one
34 pharmacy technician performing the tasks specified in subdivision (a). The ratio of
35 pharmacy technicians performing the tasks specified in subdivision (a) to any
36 additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to
37 personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio
38 is applicable to all practice settings, except for an inpatient of a licensed health
39 facility, a patient of a licensed home health agency, as specified in paragraph (2), an

1 inmate of a correctional facility of the Department of Corrections and Rehabilitation,
2 and for a person receiving treatment in a facility operated by the State Department of
State Hospitals, the State Department of Developmental Services, or the Department
of Veterans Affairs.

3 (2) The board may adopt regulations establishing the ratio of pharmacy
4 technicians performing the tasks specified in subdivision (a) to pharmacists applicable
to the filling of prescriptions of an inpatient of a licensed health facility and for a
5 patient of a licensed home health agency. Any ratio established by the board pursuant
to this subdivision shall allow, at a minimum, at least one pharmacy technician for a
6 single pharmacist in a pharmacy and two pharmacy technicians for each additional
pharmacist, except that this ratio shall not apply to personnel performing clerical
7 functions pursuant to Section 4116 or 4117 . . .

8 15. Title 16, California Code of Regulations ("CCR"), section 1714 states, in part:

9

10 (b) Each pharmacy licensed by the board shall maintain its facilities,
11 space, fixtures, and equipment so that drugs are safely and properly prepared,
maintained, secured and distributed. The pharmacy shall be of sufficient size and
12 unobstructed area to accommodate the safe practice of pharmacy . . .

13 16. Title 16, CCR, section 1718 states:

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

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

18 17. Title 16, CCR, section 1793.7 states, in pertinent part:

19 (a) Except as otherwise provided in section 1793.8, any function
performed by a pharmacy technician in connection with the dispensing of a
20 prescription, including repackaging from bulk and storage of pharmaceuticals, must
be verified and documented in writing by a pharmacist. Except for the preparation of
21 prescriptions for an inpatient of a hospital and for an inmate of a correctional facility,
the pharmacist shall indicate verification of the prescription by initialing the
22 prescription label before the medication is provided to the patient.

23 (b) Pharmacy technicians must work under the direct supervision of a
pharmacist and in such a relationship that the supervising pharmacist is fully aware of
24 all activities involved in the preparation and dispensing of medications, including the
maintenance of appropriate records.

25

26 (e) A pharmacist shall be responsible for all activities of pharmacy
27 technicians to ensure that all such activities are performed completely, safely and
without risk of harm to patients . . .

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1 **COST RECOVERY**

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

6 **DRUG CLASSIFICATIONS**

7 19. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance
8 pursuant to Health and Safety Code section 11057, subdivision (d)(1). Xanax is used to treat
9 anxiety.

10 20. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance
11 pursuant to Title 21, Code of Federal Regulations ("CFR"), section 1308.14, subdivision (c)(6).
12 Soma is used as a muscle relaxant.

13 21. "Norco", a brand name for hydrocodone/acetaminophen (APAP), was a Schedule III
14 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e). Norco
15 was reclassified as a Schedule II controlled substance pursuant to Title 21, CFR, section 1308.12,
16 effective October 6, 2014. Norco is used to treat pain.

17 22. "Dilaudid," a brand name for hydromorphone, is a Schedule II controlled substance
18 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J). Dilaudid is used to treat
19 pain.

20 23. "Ativan," a brand name for lorazepam, is a Schedule IV controlled substance
21 pursuant to Health and Safety Code section 11057, subdivision (d)(16). Ativan is used to treat
22 anxiety.

23 24. "Dolophine", a brand name for methadone, is a Schedule II controlled substance
24 pursuant to Health and Safety Code section 11055, subdivision (c)(14). Dolophine is used to treat
25 pain.

26 25. "Roxanol", a brand name for morphine sulfate, is a Schedule II controlled substance
27 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(L). Roxanol is used to treat
28 pain.

1 26. "Percolone" and "Roxicodone" are brand names for oxycodone. Oxycodone is a
2 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
3 (b)(1)(M). Percolone and Roxicodone are used to treat pain.

4 27. All of the above controlled substances are dangerous drugs pursuant to section 4022.
5

6 **STATEMENT OF FACTS**

7 28. On or about October 15, 2015, Board Inspector S. K. went to Pacific West Pharmacy
8 to conduct an inspection. The pharmacy was not open for walk-in retail business as it provided
9 services to skilled nursing and assisted living facilities. The pharmacy maintained Talyst
10 Automated Drug Delivery Systems (ADDS) and emergency kits (E-kits) in some of the facilities
11 they serviced. Upon arrival, there was only one pharmacist on duty and in the building,
12 Respondent Thomas Rogers, the pharmacist-in-charge (PIC). Pharmacist K. D. arrived later
13 during the inspection. There was a closed door labeled "IV Room" near the front of the
14 pharmacy. Inspector S. K. opened the door and observed pharmacy technician (TCH) C. Y.
15 filling and compounding sterile prescription preparations in the room. There was no one else in
16 the room, and there were no unobstructed windows on the walls nor a window in the door.

17 29. Inspector S. K. went to the main pharmacy area and observed: TCH P. P. filling and
18 labeling prescriptions, TCH Y. Y. filling prescriptions, TCH K. B. pulling drugs from stock for
19 prescriptions and filling prescriptions, and TCH D. L. handling controlled substances and other
20 drugs. D. L. was organizing controlled substances and putting them away on the drug stock
21 shelves. PIC Rogers was in the main pharmacy area during the inspection.

22 30. Inspector S. K. went into an open, separate room in the rear of the main filling area
23 and observed TCH R. B. filling cells with drugs for the ADDS. There was no one else in the
24 room. There was no door on this room.

25 31. PIC Rogers provided various documents to Inspector S. K., including inventories of
26 controlled substances conducted by the pharmacy on October 1, 2015 through October 5, 2015.
27 Inspector S. K. reviewed the pharmacy's invoices and found that they purchased controlled
28 substances from Cardinal Health ("Cardinal"), ParMed, and ANDA, Inc. ("ANDA").

1 32. Upon completion of the inspection, Inspector S. K. issued an inspection report and
2 provided PIC Rogers with a copy. Inspector S. K. requested that PIC Rogers provide complete
3 records of all acquisitions and dispositions of all controlled substances from December 13, 2013
4 to October 4, 2015, other than from Cardinal, ParMed, and ANDA. The 2013 and 2014
5 controlled substance inventories did not include a count of controlled substances in the ADDS
6 and E-kits. PIC Rogers stated that these controlled substances were stored at the off site facilities
7 in the ADDS and E-kits in order to provide emergency access to medications needed by patients.
8 Inspector S. K. requested an accounting of all controlled substances which were not on the
9 premises during the previous inventories.

10 33. On or about October 21, 2015, Inspector S. K. received the pharmacy's dispensing
11 data and the 2013 and 2014 offsite inventory information.

12 34. On or about October 22, 2015, Inspector S. K. sent Cardinal/ParMed and ANDA
13 letters, requesting records of all Schedule II to V controlled substances sold to Pacific West
14 Pharmacy from December 13, 2013 to October 4, 2015, including all credits. ANDA and
15 Cardinal/ParMed provided the information to Inspector S. K. on October 26, 2015 and November
16 10, 2015, respectively.

17 35. Inspector S. K. conducted an audit based on the 2013 inventory, 2015 inventory,
18 disposition data from Pacific West Pharmacy, and acquisition and credit data from Cardinal/
19 ParMed and ANDA. Inspector S. K. found that the pharmacy had significant shortages and
20 overages of controlled substances from December 13, 2014 to October 4, 2015, as set forth
21 below.

22 36. On or about November 18, 2015, Board Inspector S. K. returned to the pharmacy with
23 Board Inspector J. H. to conduct an inspection and follow up on the audit results. Inspector S. K.
24 found that PIC Rogers was the only pharmacist on duty and in the building. Inspector S. K.
25 observed TCH A. M. pulling drugs for prescriptions from stock and filling prescriptions, TCH's
26 P. P. and Y. Y. filling and labeling prescriptions, and TCH C. Y. compounding sterile
27 prescription preparations.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Violations of the Pharmacy Law/Pharmacy Technician to Pharmacist Ratio)**

3 37. Respondent Pacific West Pharmacy is subject to disciplinary action for
4 unprofessional conduct pursuant to section 4301, subdivision (o), of the Code in that Respondent
5 violated section 4115, subdivisions (a) and (f)(1), of the Code and Title 16, CCR, section 1793.7,
6 subdivision (b), as follows: On or about October 15, 2015, and November 18, 2015, Respondent
7 authorized or allowed at least four pharmacy technicians to fill prescriptions, compound sterile
8 prescription preparations, stock ADDS', or pull drugs from stock for prescriptions, as set forth in
9 paragraphs 28 - 36, above, when, in fact, Respondent Rogers was the only pharmacist on duty and
10 in the building. Further, Respondent Rogers was not in a position to directly supervise, and/or
11 was not fully aware of, all of the activities of the technicians, who were preparing and dispensing
12 medications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**
15 **so that Drugs Were Safely and Properly Secured)**

16 38. Respondent Pacific West Pharmacy is subject to disciplinary action for
17 unprofessional conduct pursuant to section 4301, subdivisions (o) and (j), of the Code in that on
18 and between December 13, 2013 and October 4, 2015, Respondent failed to maintain the
19 pharmacy and its facilities, space, fixtures and/or equipment so that drugs were safely and
20 properly secured, in violation of title 16, CCR, section 1714, subdivision (b), resulting in
21 significant shortages and overages of controlled substances, as follows:

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Drug	Shortage or Overage
alprazolam 2 mg	-908
carisoprodol 350 mg	-94
hydrocodone/APAP 10/325 mg	-27,980
hydrocodone/APAP 5/325 mg	-10,400
hydrocodone/APAP 7.5/325 mg	-945
hydromorphone 2 mg	-544
lorazepam 0.5 mg	-8,216
lorazepam 1 mg	2,862
methadone 10 mg	507
methadone 5 mg	104
morphine 100 mg/5 ml sol.	-324
oxycodone 10 mg	-715
oxycodone 30 mg	-638
oxycodone 5 mg	-356
oxycodone/APAP 10/325 mg	-2,454
oxycodone/APAP 5/325 mg	-398
Total units unaccounted for by the pharmacy	57,445

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain a Current Inventory of All Dangerous Drugs)

39. Respondent Pacific West Pharmacy is subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (o), of the Code in that Respondent violated sections 4081, subdivision (a), and 4105, subdivision (o), of the Code as follows: Respondent failed to maintain an accurate or current inventory of all dangerous drugs in the pharmacy, resulting in significant shortages and overages of controlled substances, as set forth in paragraph 38, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Pharmacy Law/Pharmacy Technician to Pharmacist Ratio)**

3 40. Respondent Rogers is subject to disciplinary action for unprofessional conduct
4 pursuant to section 4301, subdivision (o), of the Code in that Respondent violated section 4115,
5 subdivisions (a) and (f)(1), of the Code and Title 16, CCR, section 1793.7, subdivision (b), as
6 follows: On or about October 15, 2015, and November 18, 2015, Respondent authorized or
7 allowed at least four pharmacy technicians to fill prescriptions, compound sterile prescription
8 preparations, stock ADDS', or pull drugs from stock for prescriptions, as set forth in paragraphs
9 28 - 36, above. Respondent Rogers was the only pharmacist on duty and in the building. Further,
10 Respondent Rogers was not in a position to directly supervise and/or was not fully aware of all of
11 the activities of the technicians, who were preparing and dispensing medications.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**
14 **so that Drugs Were Safely and Properly Secured)**

15 41. Respondent Rogers is subject to disciplinary action for unprofessional conduct
16 pursuant to section 4301, subdivisions (o) and (j), of the Code in that on and between December
17 13, 2013 and October 4, 2015, Respondent failed to maintain Pacific West Pharmacy, Inc. and its
18 facilities, space, fixtures and/or equipment so that drugs were safely and properly secured, in
19 violation of title 16, CCR, section 1714, subdivision (b), resulting in significant shortages and
20 overages of controlled substances, as set the paragraph 38 above.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Failure to Maintain a Current Inventory of All Dangerous Drugs)**

23 42. Respondent Rogers is subject to disciplinary action for unprofessional conduct
24 pursuant to section 4301, subdivision (o), of the Code in that Respondent violated sections 4081,
25 subdivision (a), and 4105, subdivision (o), of the Code as follows: Respondent failed to maintain
26 an accurate or current inventory of all dangerous drugs in Pacific West Pharmacy, Inc., resulting
27 in significant shortages and overages of controlled substances, as set forth in paragraph 38 above.

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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 Pharmacy Permit Number PHY 40592, issued to Pacific West Pharmacy, Inc.;
2. Revoking or suspending Pharmacist License Number RPH 30137, issued to Tom Rogers, also known as Thomas Steven Rogers;
3. Ordering Pacific West Pharmacy, Inc. and Tom Rogers, also known as Thomas Steven Rogers, 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; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 7/30/16

Virginia Herold

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

SA2016100465