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8	BEFORE TI	Æ
0	BOARD OF PHAL	
9	DEPARTMENT OF CONS STATE OF CALL	
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11	In the Matter of the Accusation Against:	Case No. 3253
- 12	VALLEY WHOLESALE DRUG	
13	COMPANY, INC. 1401 West Fremont Street	ACCUSATION
15	Stockton, CA 95203	
14	Original Wholesale Permit No. WLS 1410,	
15	and	
16	ROGER PETERS	
17	1401 West Fremont Street	
. 17	Stockton, CA 95203 Designated Representative License No. EXC	
18	15686	
19	Respondents.	
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21	Complainant alleges:	
22	PARTIES	
23	1. Virginia Herold (Complainant)	brings this Accusation solely in her official
24	capacity as the Executive Officer of the Board of Phan	rmacy, Department of Consumer Affairs.
25	2. On or about June 5, 1981, the Board of Pharmacy issued Original	
26	Wholesale Permit Number WLS 1410 (Permit) to Valley Wholesale Drug Company, Inc.	
27	(Respondent Valley Wholesale). The Permit was in full force and effect at all times relevant to	
28	the charges brought herein and will expire on June 1,	2009, unless renewed.

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. 1	3. On or about July 25, 2000, the Board of Pharmacy issued Designated	•
2	Representative License Number EXC 15686 (License) to Roger Peters (Respondent Peters). The	
3	License was in full force and effect at all times relevant to the charges brought herein and will	
4	expire on July 1, 2009, unless renewed.	
5	JURISDICTION	
6	4. This Accusation is brought before the Board of Pharmacy (Board),	
7	Department of Consumer Affairs, under the authority of the following laws. All section	, ,
8	references are to the Business and Professions Code unless otherwise indicated.	
9	5. Section 4300 of the Code states, in pertinent part:	
10	(a) Every license issued may be suspended or revoked.	
. 11	(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and	
12	found guilty, by any of the following methods: (1) Suspending judgment.	
13	(2) Placing him or her upon probation.(3) Suspending his or her right to practice for a period not	
14	exceeding one year. (4) Revoking his or her license.	
15	(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.	
16	'	
17	(e) The proceedings under this article shall be conducted in accordance	
. 18	with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The	
19	action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.	
20	6. Section 4301 of the Code states, in pertinent part:	
21	The board shall take action against any holder of a license who is guilty of	
22	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	
23	the following:	
24	••••	
25	(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.	
26	and Onited States regulating controlled substances and dangerous drugs.	• .
27	(o) Violating or attempting to violate, directly or indirectly, or assisting in	
28	or abetting the violation of or conspiring to violate any provision or term of this	
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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.

Section 4059.5, subdivision (a) of the Code states: 7.

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

Section 4160, subdivision (d) of the Code states: 8.

(d) The board shall not issue or renew a wholesaler license until the wholesaler identifies a designated representative-in-charge and notifies the board in writing of the identity and license number of that designated representative. The designated representative-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. A wholesaler shall identify and notify the board of a new designated representative-in-charge within 30 days of the date that the prior designated representative-in-charge ceases to be the designated representative-in-charge. A pharmacist may be identified as the designated representative-in-charge.

Health and Safety Code section 11209, subdivision (a) states:

(a) No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substances received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy.

20 10. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary 22 action during the period within which the license may be renewed, restored, reissued or

24 11.

reinstated.

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

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<u>DRUGS</u>

2	12. Hydrocodone with acetaminophen 10/325 tablets; hydrocodone with
3	acetaminophen 10/500 tablets; hydrocodone with acetaminophen 7.5/750 tablets; hydrocodone
4	with acetaminophen 5/500 tablets; hydrocodone with acetaminophen 7.5/500 tablets;
5	hydrocodone with acetaminophen 5/325 tablets are all Schedule III controlled substances as
6	designated by Health and Safety Code section 11056(e)(4), and are dangerous drugs within the
7	meaning of Code section 4022, in that under federal law each requires a prescription.
8	FIRST CAUSE FOR DISCIPLINE
9	(Respondent Valley Wholesale - Failure to Require
10	Pharmacist to Sign for Delivery of Controlled Substances)
11	13. Respondent Valley Wholesale is subject to disciplinary action under Code
12	section 4301, subdivisions (j) and (o), in that Respondent Valley Wholesale allowed a non-
13	pharmacist to sign for the delivery of controlled substances in violation of Code section 4059.5,
14	subdivision (a), and Health and Safety Code section 11209, subdivision (a). The circumstances
15	are as follows:
16	14. Between July 1, 2006 and August 20, 2007, Respondent Valley Wholesale
17	allowed a non-pharmacist at Dairyland Pharmacy to sign for a total of 44 deliveries of controlled
18	substances, specifically: hydrocodone with acetaminophen 10/325 tablets; hydrocodone with
19	acetaminophen 10/500 tablets; hydrocodone with acetaminophen 7.5/750 tablets; hydrocodone
20	with acetaminophen 5/500 tablets; hydrocodone with acetaminophen 7.5/500 tablets;
21	hydrocodone with acetaminophen 5/325 tablets.
22	SECOND CAUSE FOR DISCIPLINE
23	(Respondent Peters - Failure to Require Pharmacist
24	to Sign for Delivery of Controlled Substances)
25	15. Respondent Peters is subject to disciplinary action under Code section
26	4160, subdivision (d), in that as the designated representative-in-charge he is responsible for
27	Respondent Valley Wholesale's failure to comply with state and federal laws governing
28	///

1	wholesalers, in particular, for the failure to comply with Code section 4059.5, subdivision (a),
2	and Health and Safety Code section 11209, subdivision (a). The circumstances are as follows:
3	16. Between July 1, 2006, and August 20, 2007, Respondents Valley
4	Wholesale and Peters allowed a non-pharmacist at Dairyland Pharmacy to sign for a total of 44
5	deliveries of controlled substances specifically: hydrocodone with acetaminophen 10/325
6	tablets; hydrocodone with acetaminophen 10/500 tablets; hydrocodone with acetaminophen
·7	7.5/750 tablets; hydrocodone with acetaminophen 5/500 tablets; hydrocodone with
8	acetaminophen 7.5/500 tablets; hydrocodone with acetaminophen 5/325 tablets.
.9	PRAYER
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein
11	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
12	A. Revoking or suspending Original Wholesale Permit Number WLS 1410,
13	issued to Valley Wholesale Drug Company, Inc.
14	B. Revoking or suspending Designated Representative License Number EXC
15	15686, issued to Roger Peters.
16	C. Ordering Valley Wholesale Drug Company, Inc. and Roger Peters to pay
17	the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
18	pursuant to Business and Professions Code section 125.3;
19	D. Taking such other and further action as deemed necessary and proper.
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21	DATED: <u>4/16/09</u>
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23	herina Studet
24	VIRGINIA HEROLD Executive Officer
25	Board of Pharmacy Department of Consumer Affairs
26	State of California Complainant
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