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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. 3253

13 **VALLEY WHOLESALE DRUG**
14 **COMPANY, INC.**
15 1401 West Fremont Street
Stockton, CA 95203
16 Original Wholesale Permit No. WLS 1410,

A C C U S A T I O N

17 and

18 **ROGER PETERS**
19 1401 West Fremont Street
Stockton, CA 95203
20 Designated Representative License No. EXC
15686

Respondents.

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 Pharmacy, 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.

1 chapter or of the applicable federal and state laws and regulations governing
2 pharmacy, including regulations established by the board or by any other state or
3 federal regulatory agency.

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

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

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

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

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

15 (a) No person shall deliver Schedule II, III, or IV controlled substances to a
16 pharmacy or pharmacy receiving area, nor shall any person receive controlled substances
17 on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized
18 receiving personnel signs a receipt showing the type and quantity of the controlled
19 substances received. Any discrepancy between the receipt and the type or quantity of
20 controlled substances actually received shall be reported to the delivering wholesaler or
21 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
21 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
23 reinstated.

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

1 DRUGS

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

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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:

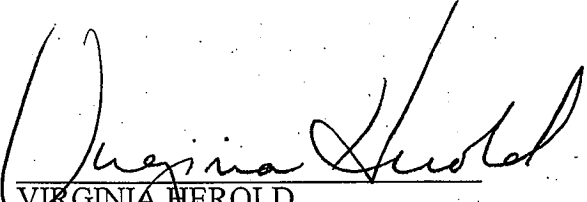
3 16. Between July 1, 2006, and August 20, 2007, Respondents Valley
4 Wholesale and Peters allowed a non-pharmacist at Dairyland Pharmacy to sign for a total of 44
5 deliveries of controlled substances specifically: hydrocodone with acetaminophen 10/325
6 tablets; hydrocodone with acetaminophen 10/500 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: 4/16/09

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25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant