

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

In the Matter of the Accusation Against:

PRIORITY PHARMACEUTICALS INC.

4040 Sorrento Valley Blvd., Suite D
San Diego, CA 92121
David Zeiger, President,
Pharmacist License No. RPH 26202

Wholesaler License No. WLS 5145

and

JANET LEE MARSH

30842 Wisteria Circle
Murrieta, CA 92563

Designated Representative No. EXC 17770

Respondents.

Case No. 4346

OAH No. 2014020535

**STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
JANET LEE MARSH ONLY**

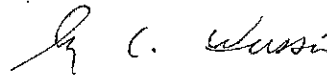
DECISION AND ORDER

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 on March 13, 2015.

It is so ORDERED on March 6, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
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9 *Attorneys for Complainant*

10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

| | |
|---|---|
| 13 In the Matter of the Accusation Against: | Case No. 4346 |
| 14 PRIORITY PHARMACEUTICALS INC. | OAH No. 2014020535 |
| 15 4040 Sorrento Valley Blvd., Suite D | STIPULATED SURRENDER OF LICENSE AND ORDER AS TO JANET LEE MARSH ONLY |
| 16 San Diego, CA 92121 | |
| 17 DAVID ZEIGER, President, | |
| 18 Pharmacist License No. RPH 26202 | |
| 19 Wholesaler License No. WLS 5145 | |
| 20 and | |
| 21 JANET LEE MARSH | |
| 22 30842 Wisteria Circle | |
| 23 Murrieta, CA 92563 | |
| 24 Designated Representative No. EXC 17770 | |
| 25 Respondents. | |

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

26 PARTIES

27 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
28 She brought this action solely in her official capacity and is represented in this matter by Kamala

1 D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy Attorney
2 General Jonathan I. Lapin, Deputy Attorney General.

3 2. Janet Lee Marsh (Respondent) is represented in this proceeding by attorney John A.
4 Cronin and Peter S. Gregorovic of Fredrickson, Mazeika & Grant, LLP, whose address is 5720
5 Oberlin Drive, San Diego, CA 92121.

6 3. On or about December 3, 2007, the Board of Pharmacy issued Designated
7 Representative License No. EXC 17770 to Janet Lee Marsh (Respondent). The Designated
8 Representative License was in full force and effect at all times relevant to the charges brought in
9 Accusation No. 4346 and will expire on January 1, 2016, unless renewed.

10 JURISDICTION

11 4. Accusation No. 4346 was filed before the Board of Pharmacy (Board), Department of
12 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
13 statutorily required documents were properly served on Respondent on September 17, 2012.
14 Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation
15 No. 4346 is attached as Exhibit A and incorporated by reference.

16 ADVISEMENT AND WAIVERS

17 5. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 4346. Respondent also has carefully read, fully
19 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
20 Order.

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

27 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

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CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 4346, if proven at a hearing, constitute cause for imposing discipline upon her Designated Representative License.

9. While Respondent believes that a significant legal issue exists with respect to statutory interpretation of Business and Professions Code section 4126.5, solely for the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation it enables the Board to issue an order accepting the voluntary surrender of her Designated Representative License without further process.

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CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
3 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
4 executed by an authorized representative of each of the parties.

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

7 **ORDER**

8 IT IS HEREBY ORDERED that Designated Representative License No. EXC 17770 issued
9 to Respondent Janet Lee Marsh, is surrendered and accepted by the Board of Pharmacy.

10 1. The voluntary surrender of Respondent's Designated Representative License and the
11 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
12 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
13 of Respondent's license history with the Board of Pharmacy.

14 2. Respondent shall relinquish and therefore lose all rights and privileges as a
15 Designated Representative (Exemptee) in California as of the effective date of the Board's
16 Decision and Order.

17 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
18 issued, her wall certificates on or before the effective date of the Decision and Order.

19 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
20 California, the Board shall treat it as a new application for licensure. Respondent must comply
21 with all the laws, regulations and procedures for licensure in effect at the time the application or
22 petition is filed, and while Respondent believes that a significant legal issue exists with respect to
23 the statutory interpretation of Business and Professions Code section 4126.5, she acknowledges
24 that Complainant established a prima facie case for the all of the charges in Accusation No. 4346
25 and that those charges constitute cause for discipline when the Board determines whether to grant
26 or deny the application or petition.

27 5. If Respondent should ever apply or reapply for a new license or certification, or
28 petition for reinstatement of a license, by any other health care licensing agency in the State of

1 California, while Respondent believes that a significant legal issue exists with respect to the
2 statutory interpretation of Business and Professions Code section 4126.5, she acknowledges that
3 Complainant established a prima facie case for the all of the charges in Accusation No. 4346 and
4 that those charges constitute cause for discipline all of the charges and allegations contained in
5 Accusation, No. 4346 for the purpose of any Statement of Issues or any other proceeding seeking
6 to deny or restrict licensure.

7 6. Respondent may not apply, reapply, or petition for any resident licensure or
8 registration of the Board for three (3) years from the effective date of the Decision and Order.

9 ACCEPTANCE

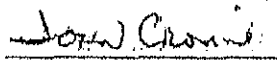
10 I have carefully read the above Stipulated Surrender of License and Order and have fully
11 discussed it with my attorney, John Cronin. I understand the stipulation and the effect it will have
12 on my Designated Representative License. I enter into this Stipulated Surrender of License and
13 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
14 of the Board of Pharmacy.

15
16 DATED: 1/28/15


17 JANET LEE MARSH
Respondent

18 I have read and fully discussed with Respondent Janet Lee Marsh the terms and conditions
19 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
20 and content.

21 DATED: 1/28/2015


22 JOHN A. CRONIN
23 Attorney for Respondent

24 ENDORSEMENT

25 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
26 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

27
28

DATED: _____

1/30/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
JONATHAN I. LAPIN
Deputy Attorney General

DESIREE J. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4346

1 KAMALA D. HARRIS
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Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Accusation Against:

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11 **PRIORITY PHARMACEUTICALS INC.**
12 **4040 Sorrento Valley Blvd., Suite D**
San Diego, CA 92121
13 **DAVID ZEIGER, President,**
Pharmacist License No. RPH 26202

ACCUSATION

14 **Wholesaler License No. WLS 5145**

15 and

16 **JANET LEE MARSH**
17 **30842 Wisteria Circle**
Murrieta, CA 92563

18 **Designated Representative No. EXC 17770**

19 Respondents.

20 Complainant alleges:

21 PARTIES

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

24 2. On or about December 3, 2007, the Board issued Wholesaler License No. WLS 5145
25 to Priority Pharmaceuticals Inc. (Respondent Priority). The License was in effect at all times
26 relevant herein and will expire December 1, 2012, unless renewed. Since on or about December
27 3, 2007, David Zeiger, Pharmacist License No. RPH 26202, has been President of Respondent
28 Priority. Business and Professions Code section 4307 is applicable herein.

1 3. On or about January 4, 2005, the Board issued Designated Representative License
2 No. EXC 17770 to Janet Lee Marsh (Respondent Marsh). The License was in effect at all times
3 relevant herein and will expire January 1, 2013, unless renewed. Since on or about December 3,
4 2007, Respondent Marsh has been Designated Representative in Charge for Respondent Priority.

5 JURISDICTION

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

9 5. Section 4011 of the Code provides that the Board shall administer and enforce both
10 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
11 Act [Health & Safety Code, § 11000 et seq.].

12 6. Section 4300(a) of the Code provides that every license issued by the Board may be
13 suspended or revoked.

14 7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
15 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
16 disciplinary action during the period within which the license may be renewed, restored, reissued
17 or reinstated. Section 4402(e) of the Code provides that any non-pharmacist license issued by the
18 Board may be canceled if not renewed within 60 days after expiration, and any license canceled
19 in this fashion may not be reissued but will instead require a new application to seek reissuance.

20 STATUTORY AND REGULATORY PROVISIONS

21 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
22 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
23 not be limited to, any of the following:

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

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

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

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

7 9. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include
8 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,
9 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes
10 possession of, any drug or device included in Section 4022."

11 10. Section 4160 of the Code provides, in pertinent part, that a wholesaler license shall be
12 required for a person or entity to act as a wholesaler, that every wholesaler shall be supervised or
13 managed by a Designated Representative in Charge, and that the Designated Representative in
14 Charge shall be responsible for the wholesaler's compliance with state and federal laws.

15 11. Section 4126.5, subdivision (a), of the Code states:

16 "(a) A pharmacy may furnish dangerous drugs only to the following:

17 (1) A wholesaler owned or under common control by the wholesaler from whom the
18 dangerous drug was acquired.

19 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

20 (3) A licensed wholesaler acting as a reverse distributor.

21 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug
22 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to
23 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

24 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized
25 by law.

26 (6) A health care provider that is not a pharmacy but that is authorized to purchase
27 dangerous drugs.

28 (7) To another pharmacy under common control."

1 12. California Code of Regulations, title 16, section 1783, subdivision (d) provides, in
2 pertinent part, that a manufacturer or wholesaler shall not accept payment for, or allow the use of
3 an entity's credit to establish an account for, the purchase of dangerous drugs or devices from any
4 person other than the owner(s) or executive officer(s) listed on the permit, on a permit's account.

5 COST RECOVERY

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

9 FACTUAL BACKGROUND

10 14. For a period of time that included but was not necessarily limited to dates on and/or
11 between January 2009 and December 2011, Respondents were engaged in a business practice that
12 involved the purchase of dangerous drugs from various pharmacies throughout California and the
13 re-sale of those dangerous drugs to wholesalers and pharmacies within and outside California.

14 15. During that time period, Respondents made purchases from at least fifty (50) different
15 California pharmacies, on at least five hundred (500) occasions. Respondent Priority was not the
16 wholesaler that had supplied the dangerous drugs to any of these pharmacies. Over thirty-five
17 (35) different dangerous drugs were purchased from California pharmacies by Respondents.

18 16. During and/or prior to that time period, Respondents solicited pharmacies to supply
19 Respondents with dangerous drugs that Respondents would identify to the pharmacies by daily,
20 weekly, or occasional lists of dangerous drugs (with dosages and strengths) titled "ITEMS WE
21 ARE LOOKING FOR" and/or "ADDITIONAL ITEMS WE ARE INTERESTED IN." At the
22 direction and/or pursuant to the encouragement of Respondents, the pharmacies would acquire the
23 dangerous drugs listed by Respondents, typically from the pharmacies' primary wholesaler(s).¹
24 The drugs acquired by the client pharmacies would then be re-sold to Respondent Priority.

25
26 ¹ For the purposes of this Accusation, "primary wholesaler" refers to the wholesaler from
27 which the pharmacy purchased the bulk of its dangerous drugs, and/or with which the pharmacy
28 enjoyed a contractual relationship giving the pharmacy an "account" with the wholesaler. Most if
not all pharmacies establish a "primary wholesaler" account relationship with a single wholesaler.
The pharmacy is issued an account number to use in ordering from the primary wholesaler.

1 17. All of the client pharmacies utilized by Respondents were community pharmacies, yet
2 all or nearly all of the drugs that were purchased by these pharmacies and re-sold to Respondents
3 were drugs primarily used in hospital or other urgent-care environments. The client pharmacies
4 were purchasing agents for Respondents, buying drugs for Respondents, not their own patients.
5 None of the client pharmacies were licensed by the Board as wholesalers.

6 18. Respondents offered and/or paid the client pharmacies a premium, typically at least
7 ten (10) percent over invoice (the price at which the pharmacy acquired the drug), plus shipping.

8 19. At least twenty (20) of the pharmacies eventually turned over their ordering privileges
9 with their primary wholesaler(s) to Respondents, such that Respondents were able to just submit
10 orders directly to the primary wholesaler(s), using the client pharmacies' account information.

11 20. Respondents re-sold the drugs that were acquired from pharmacies to wholesalers and
12 pharmacies within and outside California, often at a substantial markup. A sampling of over fifty
13 (50) purchase and re-sale transactions revealed an average markup of two hundred thirteen (213)
14 percent, with individual transactions showing markups as high as 3166%, 3255%, and 6363%.

15 21. Respondents re-sold a portion of the dangerous drugs acquired from pharmacies to
16 other wholesalers. On at least one occasion, Respondents misrepresented and/or omitted such a
17 re-sale or transfer. By way of a transaction on or about August 5, 2011, Respondents invoiced a
18 purchase of a dangerous drug from a Garfield Pharmacy, located in Beverly Hills, CA. However,
19 the shipping label that Respondents provided to Garfield Pharmacy for shipment of the drug to a
20 customer located in Cordova, TN represented that the shipment was coming not from Respondent
21 Priority but from another wholesaler (Vital Healthcare LLC) located in Savannah, GA.

22
23 **CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS**

24 FIRST CAUSE FOR DISCIPLINE

25 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

26 22. Respondent(s) are each and severally subject to discipline under section(s) 4301,
27 4301(f), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s)
28 committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

1 SECOND CAUSE FOR DISCIPLINE

2 (Making or Signing Document(s) Falsely Representing Existence or Nonexistence of Facts)

3 23. Respondent(s) are each and severally subject to discipline under section(s) 4301,
4 4301(g), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21, Respondent(s)
5 made or signed one or more certificates or other documents falsely representing the existence or
6 nonexistence of a state of facts.

7
8 THIRD CAUSE FOR DISCIPLINE

9 (Violation of Law(s))

10 24. Respondent(s) are each and severally subject to discipline under section(s) 4301,
11 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21,
12 Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs,
13 and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of,
14 or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged,
15 assisted in, abetted, or conspired toward, transaction(s) violating section 4160 of the Code, in that
16 the client pharmacies that purchased dangerous drugs on behalf of Respondent(s), and/or sold
17 dangerous drugs to Respondent(s) for re-sale, by so doing acted as unlicensed wholesalers.

18
19 FOURTH CAUSE FOR DISCIPLINE

20 (Violation of Law(s))

21 25. Respondent(s) are each and severally subject to discipline under section(s) 4301,
22 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21,
23 Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs,
24 and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of,
25 or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged,
26 assisted in, abetted, or conspired toward, transaction(s) violating section 4126.5 of the Code, by
27 purchasing dangerous drugs from and/or on behalf of pharmacies under unauthorized conditions.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Violation of Law(s))

3 26. Respondent(s) are each and severally subject to discipline under section(s) 4301,
4 4301(j), 4301(o), and/or 4160 of the Code, in that, as described in paragraphs 14 to 21,
5 Respondent(s) violated statutes of this state regulating controlled substances and dangerous drugs,
6 and/or violated/attempted to violate, directly or indirectly, assisted in or abetted the violation of,
7 or conspired to violate, the laws governing pharmacy, when Respondent(s) solicited, encouraged,
8 assisted in, abetted, or conspired toward, transaction(s) violating California Code of Regulations,
9 title 16, section 1783, subdivision (d), by causing the purchase of dangerous drugs by one or more
10 client pharmacies from a primary wholesaler on a pharmacy account controlled by Respondents.
11

12 SIXTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct)

14 27. Respondents are each and severally subject to discipline under section 4301 of the
15 Code, in that the acts described in paragraphs 14 to 26 constitute unprofessional conduct.
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20 PRAYER

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

23 1. Revoking or suspending Wholesaler License No. WLS 5145, issued to Priority
24 Pharmaceuticals Inc. (Respondent Priority);

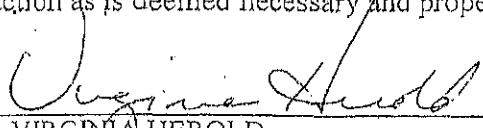
25 2. Revoking or suspending Designated Representative License No. EXC 17770, issued
26 to Janet Lee Marsh (Respondent Marsh);

27 3. Ordering Respondents to pay the Board the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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4. Taking such other and further action as is deemed necessary and proper.

DATED: 9/14/12



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

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