

**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
PRIORITY PHARMACEUTICALS, INC.**

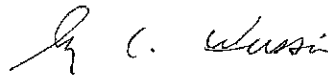
DECISION AND ORDER

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
Deputy Attorney General
4 State Bar No. 126461
JONATHAN I. LAPIN
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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.**
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San Diego, CA 92121
16 **DAVID ZEIGER, President,**
Pharmacist License No. RPH 26202

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STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
PRIORITY PHARMACEUTICALS, INC.

17 **Wholesaler License No. WLS 5145**

18 **and**

19 **JANET LEE MARSH**
20 **30842 Wisteria Circle**
Murrieta, CA 92563

21 Respondents.

22
23 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

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

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

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

6 3. On or about December 3, 2007, the Board of Pharmacy issued Wholesaler License
7 No. WLS 5145 to Priority Pharmaceuticals, Inc. (Respondent). The Wholesaler License was in
8 full force and effect at all times relevant to the charges brought in Accusation No. 4346 and will
9 expire on December 1, 2015, 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 its 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 them; the right to present evidence and to testify on its 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.

1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 4346, if
3 proven at a hearing, constitute cause for imposing discipline upon its Wholesaler License.

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

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

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
14 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
15 communicate directly with the Board regarding this stipulation and surrender, without notice to or
16 participation by Respondent or its counsel. By signing the stipulation, Respondent understands
17 and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the
18 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
19 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or
20 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
21 and the Board shall not be disqualified from further action by having considered this matter.

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

25 13. This Stipulated Surrender of License and Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

1 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
2 executed by an authorized representative of each of the parties.

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

5 **ORDER**

6 IT IS HEREBY ORDERED that Wholesaler License No. WLS 5145 is surrendered and
7 accepted by the Board of Pharmacy.

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

12 2. Respondent shall relinquish and therefore lose all rights and privileges as a
13 wholesaler in California as of the effective date of the Board's Decision and Order.

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

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

24 5. Respondent shall pay the agency its costs of investigation and enforcement in the
25 amount of \$70,000.00 as a condition precedent to the granting of any new license or petition for
26 reinstatement. David Zeiger shall be jointly and severally liable for the payment of these costs.

27 6. 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, it 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 7. Respondent shall, within thirty (30) days of the effective date of the Board's order,
8 arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board
9 of all controlled substances and dangerous drugs and devices. Respondent shall further provide
10 written proof of such disposition and submit a completed Discontinuance of Business form
11 according to Board guidelines.

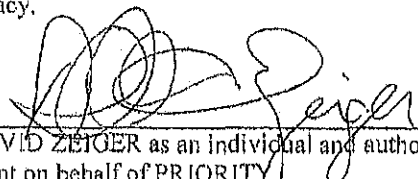
12 8. Respondent may not apply, reapply, or petition for any licensure or registration of the
13 Board for three (3) years from the effective date of the Decision and Order.

14 ACCEPTANCE

15 I, David Zeiger on behalf of Priority Pharmaceuticals, Inc., have carefully read the above
16 Stipulated Surrender of License and Order and have fully discussed it with my attorney, John A.
17 Cronin. I understand the stipulation and the effect it will have on my Wholesaler License. On
18 behalf of myself and Respondent Priority Pharmaceuticals, Inc., I enter into this Stipulated
19 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
20 by the Decision and Order of the Board of Pharmacy.

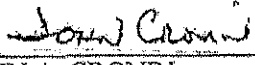
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22 DATED:

01/28/2015


23 DAVID ZEIGER as an individual and authorized
24 agent on behalf of PRIORITY
25 PHARMACEUTICALS, INC.
26 Respondent
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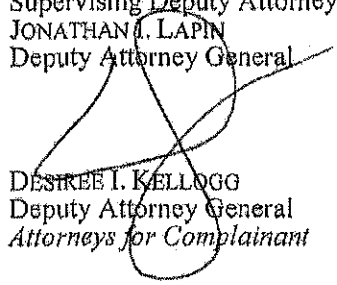
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I have read and fully discussed with Respondent David Zeiger the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 1/28/2015 
JOHN A. CRONIN
Attorney for Respondent

ENDORSEMENT

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

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 I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 4346

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
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Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

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12 **4040 Sorrento Valley Blvd., Suite D**
13 **San Diego, CA 92121**
14 **DAVID ZEIGER, President,**
15 **Pharmacist License No. RPH 26202**

ACCUSATION

16 **Wholesaler License No. WLS 5145**

17 **and**

18 **JANET LEE MARSH**
19 **30842 Wisteria Circle**
20 **Murrieta, CA 92563**

21 **Designated Representative No. EXC 17770**

22 Respondents.

23 Complainant alleges:

24 PARTIES

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

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

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 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 SIXTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct)

13
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

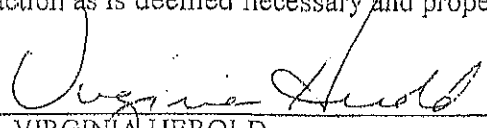
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

- 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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