

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

In the Matter of the Accusation Against:

**SERV-RITE PHARMACY;**  
**ROBERT M. LANE, Owner**  
9420 E. Slauson  
Pico Rivera, CA 90660

Pharmacy Permit No. PHY 34009

and

**ROBERT M. LANE;**  
Pharmacist-in-Charge  
9420 E. Slauson  
Pico Rivera, CA 90660

Pharmacist License No. RPH 23877

Respondents.

Case No. 4571

**STIPULATED SURRENDER OF  
LICENSE AND ORDER AS TO  
SERV-RITE PHARMACY 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 July 8, 2015.

It is so ORDERED on July 1, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
AMARYLIS GUTIERREZ  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
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7

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**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 Pharmacy Permit No. PHY 34009

**SERV-RITE PHARMACY ONLY**

15 and

16 **ROBERT M. LANE**,  
17 Pharmacist-in-Charge  
18 9420 E. Slauson  
Pico Rivera, CA 90660

19 Pharmacist License No. RPH 23877

20 Respondents.  
21

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

24 PARTIES

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
26 She brought this action solely in her official capacity and is represented in this matter by Kamala  
27 D. Harris, Attorney General of the State of California, by Susan Melton Wilson, Deputy Attorney  
28 General.



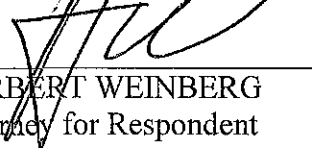






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I have read and fully discussed with Robert M. Lane , owner and authorized representative of Respondent, the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

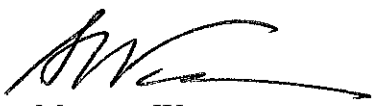
DATED: 3/30/2015   
HERBERT WEINBERG  
Attorney for Respondent

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: 5-8-15

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
GREGORY J. SALUTE  
Supervising Deputy Attorney General

  
SUSAN MELTON WILSON  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

Accusation No. 4571



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2 GREGORY J. SALUTE  
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8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4571

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**ACCUSATION**

15 Pharmacy Permit No. PHY 34009

16 and

17 **ROBERT M. LANE**,  
18 Pharmacist-in-Charge  
9420 E. Slauson  
19 Pico Rivera, CA 90660

20 Pharmacist License No. RPH 23877

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about December 23, 1986, the Board of Pharmacy issued Permit Number PHY  
27 34009 to Serv-Rite Pharmacy, with Robert M. Lane as an individual licensed owner and  
28

1 pharmacist in charge (Respondent Serv-Rite). The Permit was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on December 1, 2014, unless renewed.

3 3. On or about February 18, 1965, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 23877 to Robert M. Lane (Respondent Lane). Respondent Lane was an individual  
5 licensed owner and pharmacist-in-charge of Respondent Serv-Rite between December 23, 1986  
6 and the present. Respondent Lane's Pharmacist License was in full force and effect at all times  
7 relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

### 8 JURISDICTION

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

12 5. Section 118, subdivision (b), of the Code provides that the  
13 suspension/expiration/surrender/cancellation of a license shall not deprive the  
14 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
15 within which the license may be renewed, restored, reissued or reinstated.

16 6. Section 4022 of the Code states

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in  
18 humans or animals, and includes the following:

19 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
20 prescription," "Rx only," or words of similar import.

21 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
22 by or on the order of a \_\_," "Rx only," or words of similar import, the blank to be filled in with  
23 the designation of the practitioner licensed to use or order use of the device.

24 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
25 prescription or furnished pursuant to Section 4006."

26 7. Section 4070 of the Code states at Subdivision "a":

27 "(a) Except as provided in section 4019 and subdivision (b), an oral or an electronic data  
28 transmission prescription as defined in subdivision (c) of section 4040(c) shall soon as practicable

1 be reduced to writing by the pharmacist and shall be filled, by, or under the direction of, the  
2 pharmacist. The pharmacist need not reduce to writing the address, telephone number, license  
3 classification, federal registry number of the prescriber or the address of the patient or patients if  
4 the information is readily retrievable in the pharmacy.”

5 . . .

6 8. Section **4081** of the Code states:

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

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

19 "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally  
20 responsible for acts of the owner, officer, partner, or employee that violate this section and of  
21 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or  
22 she did not knowingly participate."

23 9. Section **4104** of the Code states:

24 "(a) Every pharmacy shall have in place procedures for taking action to protect the public  
25 when a licensed individual employed by or with the pharmacy is discovered or known to be  
26 chemically, mentally, or physical impaired to the extent it affects his or her ability to practice the  
27 profession or occupation authorized by his or her license, or is discovered or known to have  
28 engaged in the theft, diversion, or self-use of dangerous drugs.

1           “(b) Every pharmacy shall have written policies and procedures for addressing chemical,  
2 mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among  
3 licensed individuals employed by or with the pharmacy.

4           “(c) Every pharmacy shall report and provide to the board within 14 days of the receipt of  
5 development thereof, the following information with regard to any licensed individual employed  
6 by or with the pharmacy:

7                   (1) Any admission by a licensed individual of chemical, mental or physical  
8 impairment affect his or her ability to practice.

9                   (2) Any admission by a licensed individual of theft, diversion, or self-use of  
10 dangerous drugs.

11                   (3) Any video or documentary evidence demonstrating chemical, mental, or physical  
12 impairment of a licensed individual to the extent it affects his or her ability to practice.

13                   (4) Any video or documentary evidence demonstrating theft, diversion, or self-use of  
14 dangerous drugs by a licensed individual.

15                   (5) Any termination based on chemical, mental, or physical impairment of a licensed  
16 individual to the extent it affects his or her ability to practice.

17                   (6) Any termination of a licensed individual based on theft, diversion, or self-use of  
18 dangerous drugs.

19           “(d) The report required in subdivision (c) shall include sufficient detail to inform the  
20 board of the facts upon which the report is based, including an estimate of the type of quantity of  
21 all dangerous drugs involved, the timeframe over which the losses are suspected, and the date of  
22 the last controlled substances inventory. Upon request of the board, the pharmacy shall prepare  
23 and submit an audit involving the dangerous drugs suspected to be missing.

24           “(e) Anyone making a report authorized or required by this section shall have immunity  
25 from any liability, civil or criminal, that might otherwise arise from the making of the report.  
26 Any participant shall have the same immunity with respect to participation in any administrative  
27 or judicial proceeding resulting from the report.”

28           / / /

1           10. Section **4116** of the Code states:

2           “(a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the  
3 law, or a person authorized to prescribe shall be permitted to that area, place, or premises  
4 described in the license issued by the board wherein controlled, substances or dangerous drugs or  
5 dangerous devices are stored, possessed, prepared, manufactured, derived, compounded,  
6 dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who  
7 enters the pharmacy for the purposes of receiving consultation from the pharmacy or performing  
8 clerical inventory control, housekeeping, delivery, maintenance, or similar functions relating to  
9 the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized  
10 individual is present.

11           “(b)(1) The board may, by regulation, establish reasonable security measures consistent  
12 with this section in order to prevent unauthorized persons from gaining access to the area, place,  
13 or premises or to the controlled substances or dangerous drugs or dangerous devices therein.

14           “(2) The board shall, by regulation, establish conditions for the temporary absence of a  
15 pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders  
16 of the Industrial Welfare Commission without closing the pharmacy and removing authorizing  
17 personnel from the pharmacy. These conditions shall ensure the security of the pharmacy and its  
18 operations during the temporary absence of the pharmacist and shall allow at the discretion of the  
19 pharmacist, nonpharmacist personnel to remain and perform any lawful activities during the  
20 pharmacist’s temporary absence.”

21           11. Section **4125** of the Code states:

22           “(a) Every pharmacy shall establish a quality assurance program that shall, at a minimum,  
23 document medication errors attributable, in whole or in part, to the pharmacy or its personnel.  
24 The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy  
25 in dispensing or furnishing prescription medications so that the pharmacy may take appropriate  
26 action to prevent a recurrence.

27           “(b) Records generated for and maintained as a component of a pharmacy’s ongoing  
28 quality assurance program shall be considered peer reviews documents and not subject to

1 discovery in any arbitration, civil, or other proceeding, except as provided hereafter. That  
2 privilege shall not prevent review of a pharmacy's quality assurance program and records  
3 maintained as part of that system by the board as necessary to protect the public health and safety  
4 or if fraud is alleged by a government agency with jurisdiction over the pharmacy. Nothing in  
5 this section shall be construed to prohibit a patient from accessing his or her own prescription  
6 records. Nothing in this section shall affect the discoverability of any records not solely  
7 generated for and maintained as a component of a pharmacy's ongoing quality assurance  
8 program.

9 "(c) This section shall become operative on January 1, 2002."

10 12. Section **4163** of the Code states at subdivision "a":

11 "(a) A manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous  
12 drug or dangerous device to an unauthorized person."

13 13. Section **4300** of the Code states:

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

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

21 "(4) Revoking his or her license.

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

24 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
25 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
26 guilty of unprofessional conduct and who has met all other requirements for licensure

27 . . .

28 14. Section **4301** of the Code states:

1 "The board shall take action against any holder of a license who is guilty of unprofessional  
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
3 Unprofessional conduct shall include, but is not limited to, any of the following:

4 . . .

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

7 . . .

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

12 15. Section **4300.1** of the Code states:

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

18 16. Health and Safety Code section **11165** provides in pertinent part:

19 "(a) To assist law enforcement and regulatory agencies in their efforts to control the  
20 diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances,  
21 and for statistical analysis, education, and research, the Department of Justice shall, contingent  
22 upon the availability of adequate funds from the Contingent Fund of the Medical Board of  
23 California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of  
24 Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund,  
25 maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the  
26 electronic monitoring of, and Internet access to information regarding, the prescribing and  
27 dispensing of Schedule II, Schedule III and Schedule IV controlled substances by all practitioners  
28 authorized to prescribe or dispense these controlled substances.

...

“(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, Federal Regulations, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Federal Regulations, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice.

(2) The prescriber’s category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispenses.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Number of refills ordered.

**STATE REGULATIONS**

17. California Code of Regulations, title 16, section 1707.5 (Patient-Centered Labels for Prescription Drug Containers; Requirements) states in pertinent part as follows:

(a) Labels on drug containers dispensed to patients in California shall conform to the following format:

“(1) Each of the following items shall be clustered into one area of the label that comprises at least 50 percent of the label. Each item shall be printed in at least a 10-point sans serif typeface or, if requested by the consumer, at least a 12-point typeface, and listed in the following order:

“(A) Name of the patient



1           “(B) Name of the drug and strength of the drug. For the purposes of this section, “name of  
2 the drug” means either the manufacturer's trade name of the drug, or the generic name and the  
3 name of the manufacturer.

4           “(C) The directions for the use of the drug.

5           “(D) The condition or purpose for which the drug was prescribed if the condition or  
6 purpose is indicated on the prescription.

7           “(2) For added emphasis, the label shall also highlight in bold typeface or color, or use  
8 blank space to set off the items listed in subdivision (a)(1).

9           “(3) The remaining required elements for the label specified in section 4076 of the Business  
10 and Professions Code, as well as any other items of information appearing on the label or the  
11 container, shall be printed so as not to interfere with the legibility or emphasis of the primary  
12 elements specified in paragraph (1) of subdivision (a). These additional elements may appear in  
13 any style, font, and size typeface.

14  
15           “(b) By October 2011, and updated as necessary, the board shall publish on its Web site  
16 translation of the directions for use listed in subdivision (a)(4) into at least five languages other  
17 than English, to facilitate the use thereof by California pharmacies.

18           (c) The board shall collect and publish on its Web site examples of labels conforming to  
19 these requirements, to aid pharmacies in label design and compliance.

20           (d) The pharmacy shall have policies and procedures in place to help patients with limited  
21 or no English proficiency understand the information on the label as specified in subdivision (a)  
22 in the patient's language. The pharmacy's policies and procedures shall be specified in writing and  
23 shall include, at minimum, the selected means to identify the patient's language and to provide  
24 interpretive services in the patient's language. The pharmacy shall, at minimum, provide  
25 interpretive services in the patient's language, if interpretive services in such language are  
26 available, during all hours that the pharmacy is open, either in person by pharmacy staff or by use  
27 of a third-party interpretive service available by telephone at or adjacent to the pharmacy counter.

28

1 (e) The board shall re-evaluate the requirements of this section by December 2013 to ensure  
2 optimal conformance with Business and Professions Code section 4076.5.

3 (f) As used in this section, "appropriate dosage form" includes pill, caplet, capsule or tablet.

4 18. California Code of Regulations, title 16, section **1714** (Operational Standards and  
5 Security) states:

6 (a) All pharmacies (except hospital inpatient pharmacies as defined by Business and  
7 Professions Code section 4029 which solely or predominantly furnish drugs to inpatients of the  
8 hospital) shall contain an area which is suitable for confidential patient counseling.

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

13 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly  
14 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly  
15 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for  
16 pharmaceutical purposes.

17 (d) Each pharmacist while on duty shall be responsible for the security of the prescription  
18 department, including provisions for effective control against theft or diversion of dangerous  
19 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy  
20 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

21 (e) The pharmacy owner, the building owner or manager, or a family member of a  
22 pharmacist owner (but not more than one of the aforementioned) may possess a key to the  
23 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key  
24 to a pharmacist or 2) providing access in case of emergency. An emergency would include fire,  
25 flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that  
26 the pharmacist may readily determine whether the key has been removed from the container.

27 (f) The board shall require an applicant for a licensed premise or for renewal of that license  
28 to certify that it meets the requirements of this section at the time of licensure or renewal.

1 (g) A pharmacy shall maintain a readily accessible restroom. The restroom shall contain a  
2 toilet and washbasin supplied with running water.

3 19. California Code of Regulations, title 16, section **1715**. (Self-Assessment of a  
4 Pharmacy by the Pharmacist-in-Charge) states:

5 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section  
6 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's  
7 compliance with federal and state pharmacy law. The assessment shall be performed before July 1  
8 of every odd-numbered year. The primary purpose of the self-assessment is to promote  
9 compliance through self-examination and education.

10 (b) In addition to the self-assessment required in subdivision (a) of this section, the  
11 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

12 (1) A new pharmacy permit has been issued, or

13 (2) There is a change in the pharmacist-in-charge, and he or she becomes the new  
14 pharmacist-in-charge of a pharmacy.

15 (3) There is a change in the licensed location of a pharmacy to a new address.

16 (c) The components of this assessment shall be on Form 17M-13 (Rev. 01/11) entitled  
17 "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" and on  
18 Form 17M-14 (Rev. 01/11) entitled "Hospital Pharmacy Self-Assessment" which are hereby  
19 incorporated by reference to evaluate compliance with federal and state laws and regulations.

20 (d) Each self-assessment shall be kept on file in the pharmacy for three years after it is  
21 performed.

22 20. California Code of Regulations, title 16, section **1717**, states:

23 "(a) No medication shall be dispensed on prescription except in a new container which  
24 conforms with standards established in the official compendia.

25 "Notwithstanding the above, a pharmacist may dispense and refill a prescription for  
26 non-liquid oral products in a clean multiple-drug patient medication package (patient med pak),  
27 provided:

28 (1) a patient med pak is reused only for the same patient;

1 (2) no more than a one-month supply is dispensed at one time; and

2 (3) each patient med pak bears an auxiliary label which reads, store in a cool, dry place.

3 "(b) In addition to the requirements of Section 4040, Business and Professions Code, the  
4 following information shall be maintained for each prescription on file and shall be readily  
5 retrievable:

6 (1) The date dispensed, and the name or initials of the dispensing pharmacist. All  
7 prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising  
8 pharmacist before they are dispensed.

9 (2) The brand name of the drug or device; or if a generic drug or device is dispensed, the  
10 distributor's name which appears on the commercial package label; and

11 (3) If a prescription for a drug or device is refilled, a record of each refill, quantity  
12 dispensed, if different, and the initials or name of the dispensing pharmacist.

13 (4) A new prescription must be created if there is a change in the drug, strength, prescriber  
14 or directions for use, unless a complete record of all such changes is otherwise maintained.

15 "(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce  
16 it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription  
17 is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the  
18 prescription to identify him or herself.

19 "All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior  
20 to compounding, filling, dispensing, or furnishing.

21 "Chart orders as defined in Section 4019 of the Business and Professions Code are not  
22 subject to the provisions of this subsection.

23 "(d) A pharmacist may furnish a drug or device pursuant to a written or oral order from a  
24 prescriber licensed in a State other than California in accordance with Business and Professions  
25 Code Section 4005.

26 "(e) A pharmacist may transfer a prescription for Schedule III, IV, or V controlled  
27 substances to another pharmacy for refill purposes in accordance with Title 21, Code of Federal  
28 Regulations, section 1306.26.

1 " Prescriptions for other dangerous drugs which are not controlled substances may also be  
2 transferred by direct communication between pharmacists or by the receiving pharmacist's access  
3 to prescriptions or electronic files that have been created or verified by a pharmacist at the  
4 transferring pharmacy. The receiving pharmacist shall create a written prescription; identifying it  
5 as a transferred prescription; and record the date of transfer and the original prescription number.  
6 When a prescription transfer is accomplished via direct access by the receiving pharmacist, the  
7 receiving pharmacist shall notify the transferring pharmacy of the transfer. A pharmacist at the  
8 transferring pharmacy shall then assure that there is a record of the prescription as having been  
9 transferred, and the date of transfer. Each pharmacy shall maintain inventory accountability and  
10 pharmacist accountability and dispense in accordance with the provisions of section 1716 of this  
11 Division. Information maintained by each pharmacy shall at least include:

12 (1) Identification of pharmacist(s) transferring information;

13 (2) Name and identification code or address of the pharmacy from which the prescription  
14 was received or to which the prescription was transferred, as appropriate;

15 (3) Original date and last dispensing date;

16 (4) Number of refills and date originally authorized;

17 (5) Number of refills remaining but not dispensed;

18 (6) Number of refills transferred.

19 "(f) The pharmacy must have written procedures that identify each individual pharmacist  
20 responsible for the filling of a prescription and a corresponding entry of information into an  
21 automated data processing system, or a manual record system, and the pharmacist shall create in  
22 his/her handwriting or through hand-initializing a record of such filling, not later than the  
23 beginning of the pharmacy's next operating day. Such record shall be maintained for at least three  
24 years."

25 21. California Code of Regulations, title 16, section **1793.1** provides in pertinent part:

26 "Only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist,  
27 may: (a) Receive a new prescription order orally from a prescriber or other person authorized by  
28 law.

1 . . .

2 **FEDERAL REGULATIONS**

3 22. Code of Federal Regulations, Title 21, section **1304.04** (Maintenance of Records and  
4 Inventories) provided at subdivision "F":

5 (f) Each registered manufacturer distributor, importer, exporter, narcotic treatment  
6 program and compounder for narcotic treatment program shall maintain inventories and records  
7 of controlled substances as follows:

8 (1) Inventories and records of controlled substances listed in Schedule I and II shall be  
9 maintained separately from all of the records of the registrant; and

10 (2) Inventories and records of controlled substances listed in Schedule III, IV and V shall  
11 be maintained either separately from all other records of the registrant.

12 23. Code of Federal Regulations Title 21, section **1304.11** provides in pertinent part:

13 "(b) Initial Inventory date Every person required to keep records shall take an inventory  
14 of all stocks of controlled substances on hand on the date he/she first engages in the manufacture,  
15 distribution, or dispensing of controlled substances....

16 (c) Biennial inventory date. After the initial inventory is taken, the registrant shall take  
17 an inventory of all stocks of controlled substances on hand at least every two years. The biennial  
18 inventory may be taken on any date which is within two years of the previous biennial inventory  
19 date."

20 24. Code of Federal Regulations, Title 21, section **1305.13** (Procedure for filing DEA  
21 Form 222) provides:

22 (a) A purchaser must submit Copy 1 and Copy 2 of the DEA Form 222 to the supplier  
23 and retain Copy 3 in the purchaser's files.

24 (b) A supplier may fill the order, if possible and if the supplier desires to do so, and must  
25 record on Copies 1 and 2 the number of commercial or bulk containers furnished on each item  
26 and the date on which the containers are shipped to the purchaser. If an order cannot be filled in  
27 its entirety, it may be filled in part and the balance supplied by additional shipments within 60  
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1 days following the date of the DEA Form 222. No DEA Form 222 is valid more than 60 days  
2 after its execution by the purchaser, except as specified in paragraph (f) of this section.

3 (c) The controlled substances must be shipped only to the purchaser and the location  
4 printed by the Administration on the DEA Form 222, except as specified in paragraph (f) of this  
5 section.

6 (d) The supplier must retain Copy 1 of the DEA Form 222 for his or her files and forward  
7 Copy 2 to the Special Agent in Charge of the Drug Enforcement Administration in the area in  
8 which the supplier is located. Copy 2 must be forwarded at the close of the month during which  
9 the fiscal shipment is made or the 60-day validity period expires.

10 (e) The purchaser must record on Copy 3 of the DEA Form 222 the number of  
11 commercial or bulk containers furnished on each item and the dates on which the containers are  
12 received by the purchaser.

13 (f) DEA Forms 222 submitted by registered procurement officers of the Defense Supply  
14 Center of the Defense Logistics Agency for delivery to armed services establishments within the  
15 United States may be shipped to locations other than the location printed on the DEA Form 222,  
16 and in partial shipments at different times not to exceed six months from the date of the order, as  
17 designated by the procurement officer when submitting the order.

18 25. Code of Federal Regulations, Title 21, section **1306.22** provides at subdivision "F":

19 (f) As an alternative to the procedures provided by paragraphs (a) through (e) of this  
20 section, a computer application may be used for the storage and retrieval of refill information for  
21 original paper prescriptions in Schedule III and IV, subject to the following conditions:

22 (1) Any such proposed computerized application must provide online retrieval  
23 (via computer monitor or hardcopy printout) of original prescription order information for those  
24 prescription orders that are currently authorized for refilling. This staff include, but not limited  
25 to, data such as the original prescription number; date of issuance of the original prescription  
26 order by the practitioner; full name and address of the patient; name, address, and DEA  
27 registration number of the practitioner; and the name, strength, dosage form, quantity of the  
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1 controlled substance prescribed (and quantity dispensed if different from the quantity prescribed),  
2 and the total number of refills authorized by the prescribing practitioner.

3 (2) Any such proposed computerized application must also provide online  
4 retrieval (via computer monitor or hard-copy printout) of the current refill history for Schedule III  
5 or IV controlled substance prescription orders (those authorized for refill during the past six  
6 months). This refill history shall include but is not limited to, the name of the controlled  
7 substance, the date of refill, the quantity dispensed, the identification code, or name or initials of  
8 the dispensing pharmacist for each refill and the total number of refills dispensed to date for that  
9 prescription order.

10 (3) Documentation of the fact that the refill information entered into the  
11 computer each time a pharmacist refills an original paper, fax, or oral prescription order for a  
12 Schedule III or IV controlled substance is correct must be provided by the individual pharmacist  
13 who makes use of such an application. If such an application provides a hardcopy printout of  
14 each day's controlled substance prescription order refill data, that printout shall be verified, dated,  
15 and signed by the individual pharmacist who refilled such a prescription order. The individual  
16 pharmacist must verify that the data indicated are correct and then sign the document in the same  
17 manner as he would sign a check or legal document (e.g., J.H. Smith, or John H. Smith). This  
18 document shall be maintained in a separate file at the pharmacy for a period of two years from the  
19 dispensing date. This printout of the day's controlled substance prescription order refill data must  
20 be provided to each pharmacy using such a computerized application within 72 hours of the date  
21 on which the refill was dispensed. It must be verified and signed by each pharmacist who is  
22 involved with such dispensing. In lieu of such a printout, the pharmacy shall maintain a bound  
23 log book, or separate file, in which each individual pharmacist involved in such dispensing shall  
24 sign a statement (in the manner previously described) each day, attesting to the fact that the refill  
25 information entered into the computer that day has been reviewed by him and is correct as shown.  
26 Such a book or file must be maintained at the pharmacy employing such an application for a  
27 period of two years after the date of dispensing the appropriately authorized refill.

28 / / /



1 **COST RECOVERY**

2 26. Section **125.3** of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **FACTS COMMON TO ALL CAUSES FOR DISCIPLINE**

9 27. The following allegations are common to all causes for discipline in this matter:

10 a. At all times relevant herein, Respondent Richard Lane was owner and pharmacist-in-  
11 charge of Serv-Rite Pharmacy, located in Pico Rivera, CA.

12 **Board Inspection – March 22, 2012**

13 b. On or about March 22, 2012 a representative of the Board inspected Respondent  
14 Serv-Rite Pharmacy. Respondent Lane and licensed pharmacy technician B. Gonzales (an  
15 employee of the pharmacy) were present during the inspection.

16 c. During the inspection, the Inspector noticed that the pharmacy's shelves were dusty  
17 and dirty; and that a sink on the premises was "filthy," in violation of statutory requirements.  
18 (Title 16, California Code of Regulations section 1714 at subsection (c)).

19 d. Pursuant to his inquiry, the Inspector observed that that both Respondent Lane and  
20 employee B. Gonzalez both had pharmacy keys on their own separate key chains, in violation of  
21 statutory requirements.(Title 16, California Code of Regulations section 1714, subdivisions (d)  
22 and (e) which limit individuals who may legally possess an unsecured key to a pharmacy.)

23 e. In reviewing a bundle of prescription orders received by the pharmacy, the Inspector  
24 observed that employee B. Gonzalez was receiving and transcribing telephone prescription orders  
25 from doctor's offices, in violation of statutory requirements.(Title 16, California Code of  
26 Regulations section 1714, subdivision (c); Business and Profession Code section 4070).

27 f. Respondent Lane produced a partially completed self-assessment form, which was  
28 not prepared in compliance with all statutory requirements. (Title 16, California Code of

1 Regulation section 1715). Further, based on the inspection and interviews of pharmacy staff, at  
2 least 11 entries on the partially completed form were false and inaccurate.

3 g. Pursuant to questioning by the Inspector, Respondent Lane admitted that he had not  
4 submitted CURES data on a weekly basis as required by statute.(Health and Safety Code section  
5 11165, subdivision (d).)

6 h. Pursuant to questioning by the Inspector, Respondent Lane admitted that he did not  
7 have the Quality Assurance Program, nor the written policy and procedures or review forms  
8 required by statute (Business and Professions Code section 4125).

9 i. Pursuant to questioning by the Inspector, Respondent Lane admitted that he did not  
10 have any policy and procedures for an impaired employee as required by statute (Business and  
11 Profession Code section 4104).

12 j. Pursuant to questioning by the Inspector, Respondent Lane admitted that he did not  
13 have any policy and procedures in place to assist patients with limited English proficiency  
14 understand information on the prescription label or otherwise provide interpretive services, as  
15 required by statute (Title 16 California Code of Regulations section 1707.5 subdivision (d)).

16 k. In reviewing prescription labels prepared for patients of the pharmacy, the Inspector  
17 observed that the labels generated by computers in use at Respondent Serve-Rite Pharmacy no  
18 longer complied with current statutory labeling requirements.(Title 16 California Code of  
19 Regulations section 1707.5 subsection (d).)

20 l. Pursuant to questioning by the Inspector, Respondent Lane admitted that he did not  
21 have documentation or make daily print-outs of controlled substance refills dispensed by the  
22 pharmacy, and had no refill records printed or signed by the pharmacist, as required by statute  
23 (Code of Federal Regulations section 1306.22; Business and Professions Code section 4081).

24 **Federal Record Keeping Requirements**

25 m. The Inspector observed that the pharmacy's DEA inventory was incomplete, not  
26 signed, and did not otherwise comply with statutory requirements, (Code of Federal Regulations  
27 section 1304.11, sub-division (c).)

28

1 n. The Inspector found the pharmacy's DEA 222 Copy 3 records were piled in a drawer  
2 and not endorsed as required with information regarding the quantity and date received.(Code of  
3 Federal Regulations section 1305.09.)

4 o. The Inspector reviewed the pharmacy's invoices on site, and discovered that all of the  
5 invoices were co-mingled and not maintained separately by type (e.g. Schedule II controlled  
6 substance records maintained separately from Schedule III-V) as required by statute (Code of  
7 Federal Regulations section 1304.04 subdivision (f).)

8 p. As noted above, Respondent Lane admitted that he did not have documentation or  
9 make daily print-outs of controlled substance refills dispensed by the pharmacy, and had no refill  
10 records printed or signed by the pharmacist in violation of state and federal statutes. (Code of  
11 Federal Regulations section 1306.22(f) (3), which describes a required protocol for refills of  
12 computerized prescriptions for controlled substances, that includes printing the order, and having  
13 the dispensing pharmacist sign and date the printout; Business and Professions Code section  
14 4081.)

#### 15 **FIRST CAUSE FOR DISCIPLINE**

16 (Failure to Maintain Operational Standards)

17 28. Respondents LANE and SERV-RITE are subject to disciplinary action under section  
18 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
19 conjunction with section Title 16, California Code of Regulations section 1714 subdivision (c)  
20 (which requires that the pharmacy, fixtures and equipment shall be maintained in a clean and  
21 orderly condition) in that during the Board inspection n March 22, 2012, the Inspector noted that  
22 the pharmacy's shelves were dusty and dirty; and that a sink on the premises was "filthy."

#### 23 **SECOND CAUSE FOR DISCIPLINE**

24 (Failure to Secure Pharmacy: Unauthorized Employee Provided With Pharmacy Key)

25 29. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
26 under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and  
27 (o), in conjunction with Code section 4116 , subdivision (b) and Title 16, California Code of  
28

1 Regulations section 1714, subdivisions (d) and (e) (which limit individuals who may legally  
2 possess a key to a pharmacy) in that during the Board inspection on March 22, 2012, the  
3 Inspector observed that an unauthorized individual (B. Gonzalez) had been issued and had  
4 unsecured access to a pharmacy key.

5 **THIRD CAUSE FOR DISCIPLINE**

6 (Failure to Comply with Requirements for Transcription of Oral Prescriptions)

7 30. Respondents LANE ad SERV-RITE are subject to disciplinary action under section  
8 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o) in  
9 conjunction with Code section 4070 (a) and Title 16, California Code of Regulations sections  
10 1717 subdivision (c) (all orally transmitted prescriptions must be promptly reduced to writing  
11 and initialed by a pharmacist) and 1793.1 subdivision (a) (only a pharmacist can receive a *new*  
12 prescription order orally), in that on or about March 22, 2012, and on a routine basis,  
13 Respondents allowed non-pharmacist employee B. Gonzalez to receive and transcribe telephonic  
14 prescriptions.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Failed to Comply With Self Assessment Form Requirements)

17 31. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
18 under Code section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j)  
19 and (o), in conjunction with Title 16, California Code of Regulations section 1715, subdivision  
20 (a) (which requires that a pharmacy must complete a new self-assessment form before July 1 or  
21 ever odd numbered year) in that during a Board inspection on or about March 22, 2012,  
22 Respondents were unable to locate or produce a current, properly completed self assessment  
23 form.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (Failed to Maintain Records of Dangerous Drugs Open For Inspection)

26 32. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
27 under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and  
28 (o), in conjunction with Code section 4081 (which requires that all pharmacy records of

1 acquisition and disposition of dangerous drugs shall be open to inspection at all times during  
2 business hours and preserved for a 3 year period), in that during the Board inspection on March  
3 22, 2012, pursuant to questioning by the Inspector, Respondents did not have and were unable to  
4 show documentation or daily print-outs of controlled substance refills dispensed by the pharmacy,  
5 and had no refill records printed or signed by the pharmacist.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Failure to Submit CURES Data on a Weekly Basis )

8 33. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
9 under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and  
10 (o), in conjunction with Health and Safety Code section 11165(d) , in that in our about March of  
11 2012 Respondents admitted they had never complied, and/ or had routinely failed to comply with  
12 state law requirements for submission of CURES data on a weekly basis.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 (Failure to Implement Quality Assurance Program )

15 34. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
16 under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and  
17 (o), in conjunction with Code section 4125 , in that in our about March of 2012 Respondents  
18 admitted they had never implemented and/ or had routinely failed to comply with state law  
19 Quality Assurance Program requirements, nor did Respondents have the written policy and  
20 procedures or review forms required by statute.

21 **EIGHTH CAUSE FOR DISCIPLINE**

22 (Failure to Comply With Operational Requirements –Impaired Employee Policy)

23 35. Respondents LANE and SERV-RITE are subject to subject to disciplinary action  
24 under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and  
25 (o), in conjunction with Code section 4104 , in that at the time of the Board's inspection in  
26 March of 2012 Respondents admitted they had never implemented and/ or had routinely failed to  
27 comply with state law requiring that Resents establish policy and procedures for an impaired  
28 employee.

1 **NINTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Patient-Centered Labeling Requirements )

3 36. Respondents LANE and SERV-RITE are subject to disciplinary action under section  
4 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
5 conjunction with California Code of Regulations, title 16, section 1707.5, subdivisions (a) and  
6 (d) in that based on the Board's March 2012 inspection, Respondents failed to comply or were  
7 unable to comply with patient-centered prescription labeling requirements as follows:

8 a. **Title 16 California Code of Regulations section 1707.5 subdivision (a)** – The  
9 labels generated by computers in use at Respondent Serve-Rite Pharmacy no longer complied  
10 with current statutory labeling requirements.

11 b. **Title 16 California Code of Regulations section 1707.5 subdivision (d)**. –  
12 Respondents failed to have any policy and procedures in place to assist patients with limited  
13 English proficiency understand information on the prescription label or otherwise provide  
14 interpretive services.

15 **TENTH CAUSE FOR DISCIPLINE**

16 (Failure to Comply with Record Keeping Requirements – Federal Regulations)

17 37. Respondents LANE and SERV-RITE are subject to disciplinary action under section  
18 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
19 conjunction with multiple federal regulations pertaining to pharmacy record keeping  
20 requirements as specified below, due to their failure to manage and operate Serv-Rite pharmacy  
21 in accord with current state and federal law:

22 a. **Code of Federal Regulations section 1304.11 (c)**- The pharmacy's DEA inventory  
23 was incomplete, not signed, and did not otherwise comply with statutory requirements.

24 b. **Code of Federal Regulations section 1305.09** - The pharmacy's DEA 222 Copy 3  
25 records were piled in a drawer and not endorsed as required with information regarding the  
26 quantity and date received.

27 c. **Code of Federal Regulations section 1304.04(f)** - The pharmacy's invoices were co-  
28 mingled and not maintained separately by type as required by statute.

1 d. **Code of Federal Regulations section 1306.22 (f) (3)** (and Business and Professions  
2 Code section 4081) - Failure to maintain daily print-outs of controlled substance refills dispensed  
3 by the pharmacy.

4 **DISCIPLINARY CONSIDERATIONS**

5 38. To determine the degree of penalty to be imposed on Respondent(s), if any,  
6 Complainant makes the following additional allegations:

7 **Prior Citation – Respondent Serv-Rite Pharmacy**

8 a. On or about July 21 and 22, 2008, a representative of the Board inspected and  
9 investigated Respondent Serv-Rite Pharmacy. Pursuant to that inspection, on December 18, 2008,  
10 Administrative Citation/Assessment of Fine No. **CI 2007 36009** was issued to Respondent Serv  
11 Rite for violating Codes and Regulations as set forth below, resulting in the issuance of a  
12 \$2,750.00 fine, which Respondent paid in full. The citation is now final.

13

<b>Code/Regulation(s) Violated</b>	<b>Description</b>
1. California Code of Regulations (CCR), title 16, § 1793.7	Requirements for pharmacies employing pharmacy technicians
2. CCR, title 16, § 1715.5	Implementation of electronic monitoring of Schedule II prescriptions
3. Code of Federal Regulations (CFR), title 21. § 1304.	Inventory Requirements
4. CCR, title 16, § 1714.1	Pharmacy Operations during the temporary absence of a pharmacist

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23 **Prior Citation – Respondent Lane**

24 a. On or about July 21 and 22, 2008, a representative of the Board inspected and  
25 investigated Respondent Serv-Rite Pharmacy. Pursuant to that inspection, on December 18, 2008,  
26 Administrative Citation/Assessment of Fine No. **CI 200838036** was issued to Respondent Lane  
27 for violating Codes and Regulations as set forth below, resulting in the issuance of a  
28

1 \$2,750.00 fine, which Respondent paid in full. The citation is now final.

2

<b>Code/Regulation(s) Violated</b>	<b>Description</b>
1. CCR, title 16, § 1793.7	Requirements for pharmacies employing pharmacy technicians
2. CCR, title 16, § 1715.5	Implementation of electronic monitoring of Schedule II prescriptions
3. CFR, title 21, § 1304.11	Inventory Requirements
4. CCR, title 21, § 1714.1	Pharmacy Operations during the temporary absence of a pharmacist

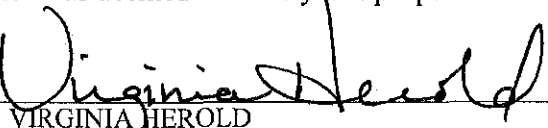
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9 **PRAYER**

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

- 12
- 13 1. Revoking or suspending Permit Number PHY 34009 to Serv-Rite Pharmacy;
  - 14 2. Ordering Serv-Rite Pharmacy to pay the Board of Pharmacy the reasonable costs of  
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
16 125.3;
  - 17 3. Revoking or suspending Pharmacist License Number RPH 23877, issued to Robert  
18 M. Lane;
  - 19 4. Ordering Robert M. Lane to pay the Board of Pharmacy the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3;
  - 22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: 3/27/14

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

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