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

In the Matter of the Accusation Against:

Case No. 5117

ROCHESTER ENTERPRISES INC.
2061 Business Center Drive, Ste. 204
Irvine, CA 92612

DEFAULT DECISION AND ORDER

Wholesale Permit No. WLS 5966

[Gov. Code, §11520]

ROGER SERNA
12560 HASTER St., Spc 84
Garden Grove, CA 92840

Designated Representative License No.
EXC 21937

Respondents.

FINDINGS OF FACT

1. On or about September 28, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5117 against Rochester Enterprises Inc. (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 27, 2012, the Board of Pharmacy (Board) issued Wholesale Permit No. WLS 5966 to Respondent Rochester Enterprises, Inc. (Respondent Rochester Enterprises.) The Wholesale Permit expired on April 1, 2013, and has not been renewed. This lapse in

1 licensure, however pursuant to Business and Professions Code sections 118(b) and 4300.1, does
2 not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3 3. On or about October 3, 2012, the Board issued Designated Representative License
4 Number EXC 21937 to Roger Serna (Respondent Roger Serna.) The Designated Representative
5 License expired on October 1, 2013 and has not been renewed. This lapse in licensure, however
6 pursuant to Business and Professions Code sections 118(b) and 4300.1, does not deprive the
7 Board of its authority to institute or continue this disciplinary proceeding.

8 4. On or about October 7, 2014, Respondent Rochester Enterprises was served by
9 Certified and First Class Mail copies of the Accusation No. 5117, Statement to Respondent,
10 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
11 11507.5, 11507.6, and 11507.7) at Respondent Rochester Enterprises' address of record which,
12 pursuant to Business and Professions Code section 4100, is required to be reported and
13 maintained with the Board. Respondent Rochester Enterprises' address of record was and is 2061
14 Business Center Drive, Ste. 204, Irvine, CA 92612.

15 5. On or about October 7, 2014, Respondent Roger Serna was served by Certified and
16 First Class Mail copies of the Accusation No. 5117, Statement to Respondent, Notice of Defense,
17 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
18 and 11507.7) at Respondent Roger Serna's address of record which, pursuant to Business and
19 Professions Code section 4100, is required to be reported and maintained with the Board.
20 Respondent Rochester Enterprises' address of record was and is 12560 Haster St., Spc. 84,
21 Garden Grove, CA 92840.

22 6. Service of the Accusation was effective as a matter of law under the provisions of
23 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
24 124.

25 7. On or about October 20, 2014, the aforementioned documents served on Respondent
26 Rochester Enterprises were returned by the U.S. Postal Service marked "No Forwarding
27 Address." The aforementioned documents served on Respondent Roger Serna via certified mail
28 were returned as "unclaimed" by the U.S. Postal Service.

1 8. Government Code section 11506 states, in pertinent part:

2 (c) The respondent shall be entitled to a hearing on the merits if the respondent
3 files a notice of defense, and the notice shall be deemed a specific denial of all parts
4 of the accusation not expressly admitted. Failure to file a notice of defense shall
5 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
6 may nevertheless grant a hearing.

7 9. Respondents failed to file a Notice of Defense within 15 days after service upon them
8 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
9 5117.

10 10. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at the
12 hearing, the agency may take action based upon the respondent's express admissions
13 or upon other evidence and affidavits may be used as evidence without any notice to
14 respondent.

15 11. Pursuant to its authority under Government Code section 11520, the Board finds
16 Respondents are in default. The Board will take action without further hearing and, based on the
17 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
18 taking official notice of all the investigatory reports, exhibits and statements contained therein on
19 file at the Board's offices regarding the allegations contained in Accusation No. 5117, finds that
20 the charges and allegations in Accusation No. 5117, are separately and severally, found to be true
21 and correct by clear and convincing evidence.

22 12. Taking official notice of its own internal records, pursuant to Business and
23 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
24 and Enforcement is \$13,660.25 as of October 31, 2014.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Rochester Enterprises Inc. has
27 subjected its Wholesale Permit No. WLS 5966 to discipline and Respondent Roger Serna has
28 subjected his Designated Representative License No. EXC 21937 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent Rochester Enterprises'
Wholesale Permit and Respondent Roger Serna's Designated Representative License based upon

1 the following violations alleged in the Accusation which are supported by the evidence contained
2 in the Default Decision Evidence Packet in this case:

3 a. Respondents are subject to disciplinary action under Code section 4301(o), for
4 violating Business and Professions Code section 4160(a), in that they purchased and sold
5 dangerous drugs, including drugs used for the treatment of HIV and AIDS drugs while unlicensed
6 as a wholesaler.

7 b. Respondents are subject to disciplinary action under Code section 4301(o), for
8 violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
9 drugs, including drugs used for the treatment of HIV and AIDS drugs from an unlicensed entity,
10 SD Trading.

11 c. Respondents are subject to disciplinary action under Code sections 4301(o), for
12 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
13 disposition of dangerous drugs open for inspection or keep a current inventory as defined by
14 California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs
15 used for the treatment of AIDS and HIV, they sold to pharmacies.

16 d. Respondents are subject to disciplinary action under Code section 4301(o), for
17 violating Code sections 4105(a) and (c), in that Respondents failed to retain records for the
18 dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold.

19 e. Respondents are subject to disciplinary action under Code section 4301(q), for
20 subverting an investigation of the Board in that they made misrepresentations to the Board
21 Inspector about their access to records, failed to respond to inquiries for records and produced
22 redacted copies of records.

23 f. Respondents are subject to disciplinary action under Code section 4301(f), in that
24 they committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

25 g. Respondents are subject to disciplinary action under Code section 4301 for
26 unprofessional conduct in that they engaged in the activities described above.

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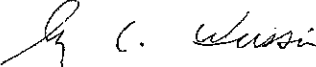
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Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This decision shall become effective on January 9, 2015.

It is so ORDERED on December 10, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

70974402.DOC/DOJ Matter ID:SD2014706770
Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:

Case No. 5117

12 **ROCHESTER ENTERPRISES INC.**
13 **2061 Business Center Drive, Ste. 204**
14 **Irvine, CA 92612**

A C C U S A T I O N

15 Wholesale Permit No. WLS 5966

16 **ROGER SERNA**
17 **12560 Haster St., Spc. 84**
Garden Grove, CA 92840

18 **Designated Representative License**
No. EXC 21937

19 Respondents.
20

21
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 April 27, 2012, the Board of Pharmacy issued Wholesale Permit Number
27 WLS 5966 to Rochester Enterprises Inc. (Respondent Rochester Enterprises). The Wholesale
28 Permit expired on April 1, 2013, and has not been renewed.

1 pharmacist-in-charge or representative-in-charge, for maintaining the records and
2 inventory described in this section.

3 13. Section 4105 of the Code states in pertinent part that:

4 (a) All records or other documentation of the acquisition and disposition of
5 dangerous drugs and dangerous devices by any entity licensed by the board shall be
6 retained on the licensed premises in a readily retrievable form.”

7

8 (c) The records required by this section shall be retained on the licensed
9 premises for a period of three years from the date of making.

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

14 15. Section 4163 (a) of the Code states:

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

17 16. Section 4169 of the Code states in pertinent part:

18 (a) A person or entity may not do any of the following:

19 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at
20 wholesale with a person or entity that is not licensed with the board as a wholesaler
21 or pharmacy.

22

23 (5) Fail to maintain records of the acquisition or disposition of dangerous
24 drugs or dangerous devices for at least three years.

25

26 17. Section 4301 of the Code states in pertinent part:

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

....

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

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

10 (q) Engaging in any conduct that subverts or attempts to subvert an
11 investigation of the board.

12 18. California Code of Regulations, title 16, section 1718 states in pertinent part that
13 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code
14 shall be considered to include complete accountability for all dangerous drugs handled by every
15 licensee enumerated in Sections 4081 and 4332.

16 COST RECOVERY

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

21 DRUGS

22 20. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
23 Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complera,
24 epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread
25 and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022
26 and possess a high resale and street dollar value.

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FACTUAL ALLEGATIONS

21. On or about April 10, and May 18, 2012, AIDS Healthcare Foundation, a nonprofit organization whose mission is to provide cutting edge medicine and advocacy for HIV and AIDS patients, regardless of ability to pay, filed a complaint with the Board alleging that Respondent Rochester Enterprises was engaged in a scheme whereby it knowingly and willfully offered HIV and AIDS patients cash and in-kind inducements (i.e., gift cards, rent and utility subsidies) to transfer their prescriptions for AIDS drugs, many of which were paid for by Medicare and Medicaid to TLC Express Pharmacy and Beverly Hills Medical Plaza Pharmacy.

22. The Board investigation revealed that Respondents operated a "Confidential Patient Services" (CPS) program, whereby they solicited AIDS and HIV patients to transfer their prescriptions for drugs to their pharmacies. Respondent Rochester Enterprises' website stated that it used "[trained] case/social workers [to] give personal care to members" and requested patients' full medical records as part of an agreement to purchase "healthcare products or services" from Respondent Rochester Enterprises. Respondents also represented on their website that Respondent Rochester Enterprises "functioned like a normal pharmacy" and each prescription was "processed by Rochester Enterprises' Physicians and Pharmacist."

23. From October 3, 2012 through April 1, 2013, Respondent Roger Serna was the Designated Representative-in-Charge (DRIC) of Respondent Rochester Enterprises.

24. At all times mentioned herein, ST Trading was an entity that was not licensed by the Board, had no premises or telephone numbers and was non-existent. From October 17, 2012 through May 14, 2013, Respondents purchased dangerous drugs, including drugs used for the treatment of AIDS and HIV as described in paragraph 20, above, at the cost of \$3,062,122.78 from SD Trading. On October 10, 2012 and March 27, 2013, Respondents returned a portion of those drugs to ST Trading.

25. From February 23, 2012 through March 28, 2012, Respondents sold dangerous drugs, including drugs used for the treatment of HIV and AIDS to Beverly Hills Medical Plaza Pharmacy when Respondent Rochester Enterprises was unlicensed by the Board.

1 SD Trading, as set forth in paragraphs 21 through 30 above, which are incorporated herein by
2 reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Keep Records of Acquisition and Disposition Open for Inspection and to Keep**
5 **Current Inventory)**

6 33. Respondents are subject to disciplinary action under Code sections 4301(o), for
7 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
8 disposition of dangerous drugs open for inspection or keep a current inventory as defined by
9 California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs
10 used for the treatment of AIDS and HIV, they sold to pharmacies, as set forth in paragraphs 21
11 through 30, which are incorporated herein by reference.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Failure to Retain Records of Dangerous Drugs on Licensed Premises)**

14 34. Respondents are subject to disciplinary action under Code section 4301(o), for
15 violating Code sections 4105(a) and (c), in that Respondents failed to retain records for the
16 dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold, as
17 set forth in paragraphs 21 through 30, which are incorporated herein by reference.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Subverting an Investigation)**

20 35. Respondents are subject to disciplinary action under Code section 4301(q), for
21 subverting an investigation of the Board in that they made misrepresentations to the Board
22 Inspector about their access to records, failed to respond to inquiries for records and produced
23 redacted copies of records, as set forth in paragraphs 21 through 30, which are incorporated herein
24 by reference.

1 PRAYER

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

4 1. Revoking or suspending Wholesale Permit Number WLS 5966, issued to Rochester
5 Enterprises Inc.;

6 2. Revoking or suspending Designated Representative License Number EXC 21937,
7 issued to Roger Serna;

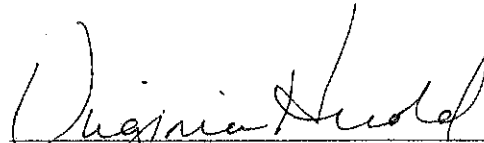
8 3. Prohibiting Roger Serna from serving as a manager, administrator, owner, member,
9 officer, director, associate, or partner of a licensee for five years if Wholesaler Permit Number
10 WLS 5966 is placed on probation or until Wholesaler Permit Number WLS 5966 is reinstated if
11 Wholesaler Permit Number WLS 5966 issued to Rochester Enterprises, Inc. is revoked;

12 4. Prohibiting Roger Serna from serving as a manager, administrator, owner, member,
13 officer, director, associate, or partner of a licensee for five years if Designated Representative
14 License Number EXC 21937 is placed on probation or until Designated Representative License
15 Number EXC 21937 is reinstated if Designated Representative License Number EXC 21937
16 issued to Roger Serna is revoked;

17 5. Ordering Rochester Enterprises Inc. and Roger Serna to pay the Board of Pharmacy
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;

20 6. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 9/28/14



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

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