

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

In the Matter of the Statement of Issues
Against:

Case No. 5494

**DUBIN MEDICAL, INC., GILBERT
CARPENTER, PRESIDENT/CEO**

Nonresident Wholesaler Permit

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on May 12, 2016.

It is so ORDERED on April 12, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the Statement of Issues Against:

Case No. 5494

12 **DUBIN MEDICAL, INC.,**
13 **GILBERT CARPENTER, PRESIDENT/CEO**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **NonResident Wholesaler Permit**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney
23 General.

24 2. Respondent Dubin Medical, Inc., Gilbert Carpenter, President/CEO ("Respondent") is
25 represented in this proceeding by attorney Ivan Petrzelka, Pharm.D., J.D., M.B.A., whose address
26 is: 2855 Michelle Drive, Ste. 180, Irvine, CA 92606-1027.

27 3. On or about August 5, 2014, Respondent filed an application dated September 25,
28 2014, with the Board of Pharmacy to obtain a Nonresident Wholesaler Permit.

1 communicate directly with the Board regarding this stipulation and settlement, without notice to
2 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
3 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
4 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
5 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
6 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
7 and the Board shall not be disqualified from further action by having considered this matter.

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

11 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

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

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that upon completion of all licensure requirements,
22 Respondent Dubin Medical, Inc., Gilbert Carpenter, President/CEO shall be issued a Nonresident
23 Wholesaler Permit, which will be immediately revoked. The revocation will be stayed and the
24 Respondent placed on three (3) years probation on the following terms and conditions.

25 1. **Obey All Laws**

26 Respondent shall obey all state and federal laws and regulations.

27 Respondent shall report any of the following occurrences to the Board, in writing, within
28 seventy-two (72) hours of such occurrence:

- 1 an arrest or issuance of a criminal complaint for violation of any provision of the
2 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
3 substances laws
- 4 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
5 criminal complaint, information or indictment
- 6 a conviction of any crime
- 7 discipline, citation, or other administrative action filed by any state or federal agency
8 which involves Respondent's Nonresident Wholesaler Permit or which is related to
9 the practice of pharmacy or the manufacturing, obtaining, handling or distributing,
10 billing, or charging for any drug, device or controlled substance.

11 Failure to timely report any such occurrence shall be considered a violation of probation.

12 **2. Report to the Board**

13 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
14 designee. The report shall be made either in person or in writing, as directed. Among other
15 requirements, Respondent shall state in each report under penalty of perjury whether there has
16 been compliance with all the terms and conditions of probation. Failure to submit timely reports
17 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
18 in submission of reports as directed may be added to the total period of probation. Moreover, if
19 the final probation report is not made as directed, probation shall be automatically extended until
20 such time as the final report is made and accepted by the Board.

21 **3. Interview with the Board**

22 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
23 with the Board or its designee, at such intervals and locations as are determined by the Board or
24 its designee. Failure to appear for any scheduled interview without prior notification to Board
25 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
26 during the period of probation, shall be considered a violation of probation.

27 **4. Cooperate with Board Staff**

28 Respondent shall cooperate with the Board's inspection program and with the Board's

1 monitoring and investigation of Respondent's compliance with the terms and conditions of their
2 probation. Failure to cooperate shall be considered a violation of probation.

3 **5. Probation Monitoring Costs**

4 Respondent shall pay any costs associated with probation monitoring as determined by the
5 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
6 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
7 shall be considered a violation of probation.

8 **6. Status of License**

9 Respondent shall, at all times while on probation, maintain current licensure with the
10 Board. If Respondent submits an application to the Board, and the application is approved, for a
11 change of location, change of permit or change of ownership, the Board shall retain continuing
12 jurisdiction over the license, and the Respondent shall remain on probation as determined by the
13 Board. Failure to maintain current licensure shall be considered a violation of probation.

14 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
15 during the period of probation, including any extensions thereof or otherwise, upon renewal or
16 reapplication Respondent's license shall be subject to all terms and conditions of this probation
17 not previously satisfied.

18 **7. License Surrender While on Probation/Suspension**

19 Following the effective date of this Decision, should Respondent discontinue business,
20 Respondent may tender the premises license to the Board for surrender. The Board or its
21 designee shall have the discretion whether to grant the request for surrender or take any other
22 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
23 license, Respondent will no longer be subject to the terms and conditions of probation.

24 Upon acceptance of the surrender, Respondent shall relinquish the premises wall and
25 renewal license to the Board within ten (10) days of notification by the Board that the surrender is
26 accepted. Respondent shall further submit a completed Discontinuance of Business form
27 according to Board guidelines and shall notify the Board of the records inventory transfer.

28 Respondent may not apply for any new licensure from the Board for three (3) years from

1 the effective date of the surrender. Respondent shall meet all requirements applicable to the
2 license sought as of the date the application for that license is submitted to the Board.

3 **8. Notice to Employees**

4 Respondent shall, upon or before the effective date of this Decision, ensure that all
5 employees involved in permit operations are made aware of all the terms and conditions of
6 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
7 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
8 remain posted throughout the probation period. Respondent shall ensure that any employees
9 hired or used after the effective date of this Decision are made aware of the terms and conditions
10 of probation by posting a notice, circulating a notice, or both. Additionally, Respondent shall
11 submit written notification to the Board, within fifteen (15) days of the effective date of this
12 Decision, that this term has been satisfied. Failure to submit such notification to the Board shall
13 be considered a violation of probation.

14 "Employees" as used in this provision includes all full-time, part-time,
15 volunteer, temporary and relief employees and independent contractors employed or
16 hired at any time during probation.

17 **9. Owners and Officers: Knowledge of the Law**

18 Respondent shall provide, within thirty (30) days after the effective date of this Decision,
19 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
20 or more of the interest in Respondent or Respondent's stock, and any officer, stating under
21 penalty of perjury that said individuals have read and are familiar with state and federal laws and
22 regulations governing the practice of pharmacy. The failure to timely provide said statements
23 under penalty of perjury shall be considered a violation of probation.

24 **10. Posted Notice of Probation**

25 Respondent shall prominently post a probation notice provided by the Board in a place
26 conspicuous and readable to the public. The probation notice shall remain posted during the
27 entire period of probation.

28 Respondent shall not, directly or indirectly, engage in any conduct or make any statement

1 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
2 member of the public, or other person(s) as to the nature of and reason for the probation of the
3 licensed entity.

4 Failure to post such notice shall be considered a violation of probation.

5 **11. Violation of Probation**

6 If a Respondent has not complied with any term or condition of probation, the Board shall
7 have continuing jurisdiction over Respondent's license, and probation shall be automatically
8 extended until all terms and conditions have been satisfied or the Board has taken other action as
9 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
10 probation, and to impose the penalty that was stayed.

11 If Respondent violates probation in any respect, the Board, after giving Respondent notice
12 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
13 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
14 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
15 a petition to revoke probation or an accusation is filed against Respondent during probation, the
16 Board shall have continuing jurisdiction and the period of probation shall be automatically
17 extended until the petition to revoke probation or accusation is heard and decided.

18 **12. Completion of Probation**

19 Upon written notice by the Board or its designee indicating successful completion of
20 probation, Respondent license will be fully restored.

21 **13. No Purchasing From Pharmacies**

22 With the exception of returns from existing customers, Respondents shall not engage in
23 purchasing drugs from any pharmacy for any reason.

24 ACCEPTANCE

25 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
26 discussed it with my attorney, Ivan Petrzelka, Pharm.D., J.D., M.B.A. I understand the
27 stipulation and the effect it will have on my Wholesaler Permit. I enter into this Stipulated
28

1 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
2 bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 2-22-2016


GILBERT CARPENTER, President/CEO and
authorized agent on behalf of DUBIN MEDICAL,
INC.,
Respondent

7 I have read and fully discussed with Respondent the terms and conditions and other matters
8 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
9 content.

10 DATED: February 24, 2016


Ivan Petrzelka, Pharm.D., J.D., M.B.A.
Attorney for Respondent

12 ENDORSEMENT

13 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
14 submitted for consideration by the Board of Pharmacy.

15 Dated:

16 01/25/2016

Respectfully submitted,

17 KAMALA D. HARRIS
Attorney General of California
18 JAMES M. LEDAKIS
Supervising Deputy Attorney General
19 
NICOLE R. TRAMA
20 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 5494

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BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 5494

STATEMENT OF ISSUES

13 **DUBIN MEDICAL, INC.,**
14 **GILBERT CARPENTER,**
PRESIDENT/CEO

15 **Nonresident Wholesaler Permit Applicant**

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about August 5, 2014, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Nonresident Wholesaler Permit from Dubin Medical, Inc.,
24 with Gilbert Carpenter, President/CEO (Respondent). On or about September 25, 2014, Gilbert
25 Carpenter certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on April 24, 2015.
- 27
28

1 Medical, Inc., doing business as Dubin Medical (Permit Number WLS 4212) on September 20,
2 2015:

3 1. Violating and/or attempting to violate, directly or indirectly, assisted in or
4 abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondent
5 solicited, encouraged, assisted in, abetted, or conspired toward, transactions violating sections
6 4160 and 4163 of the Code, in that pharmacies that purchased dangerous drugs on behalf of
7 Respondent, and/or sold dangerous drugs to Respondent for re-sale, by doing so acted as
8 unlicensed wholesalers in violation of Code section 4301(o).

9 2. Violating and/or attempting to violate, directly or indirectly, assisted in or
10 abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondent
11 solicited, encouraged, assisted in, abetted, or conspired toward, transactions violating section
12 4126.5 of the Code, by purchasing dangerous drugs from pharmacies under unauthorized
13 conditions in violation of Code section 4301(o).

14 3. Committing unprofessional conduct in violation of Code section 4301.

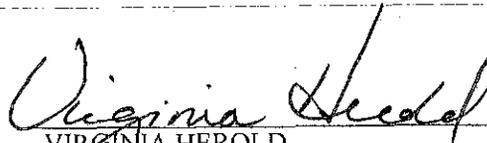
15 c. A true and correct copy of Accusation No. 4577 is attached hereto as Exhibit "A,"
16 and incorporated herein by reference.

17 PRAYER

18 1. Denying the application for a Nonresident Wholesaler Permit from Dubin Medical,
19 Inc., with Gilbert Carpenter, President/CEO (Respondent).

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

21
22 DATED: 10/20/15



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

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