

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

In the Matter of the Accusation Against:

RALEY'S CENTRAL PHARMACY, No. 949
2828 Ramco Street, Suite 100
West Sacramento, CA 95691

Pharmacy Permit No. PHY 45843

and

JAMES E. PALM
4034 Estate Drive
Vacaville, CA 95866

Pharmacist License No. RPH 41806

Respondents.

Case No. 3165

OAH No. H-2008090921

**(Raley's Central Pharmacy No. 949
only)**

DECISION AND ORDER

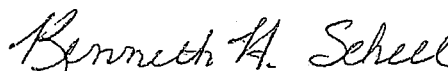
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 23, 2009.

It is so ORDERED on September 23, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
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7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

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2828 Ramco Street, Suite 100
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14 Pharmacy Permit No. PHY 45843

15 and

16 JAMES E. PALM
4034 Estate Drive
Vacaville, California 95866

17 Pharmacist License No. RPH 41806

18 Respondents.
19

Case No. 3165

OAH No. N-2008090921

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER (Raley's
Central Pharmacy No. 949 only)**

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

22 PARTIES

23 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
24 Pharmacy. She brought this action solely in her official capacity and is represented in this
25 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Kent D. Harris,
26 Deputy Attorney General.

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1 CULPABILITY

2 8. Respondent hereby stipulates and agrees that should it ever appear before
3 the California Board of Pharmacy or any successor agency on this or any other licensing or
4 disciplinary matter, each and every fact, charge, and allegation in Accusation No. 3165 shall be
5 deemed true and proved without the necessity of further proof.

6 9. Respondent agrees that its Pharmacy Permit is subject to discipline and
7 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
8 below.

9 CONTINGENCY

10 10. The parties understand and agree that electronic or facsimile copies of this
11 Stipulated Settlement and Disciplinary Order, including electronic or facsimile signatures
12 thereto, shall have the same force and effect as the originals.

13 11. In consideration of the foregoing stipulations, the parties agree that the
14 Board may, without further notice or formal proceeding, issue and enter the following
15 Disciplinary Order:

16 DISCIPLINARY ORDER

17 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 45843 issued to
18 Respondent Raley's Central Pharmacy; is revoked. However, the revocation is stayed and
19 Respondent is placed on probation for four (4) years on the following terms and conditions.

20 1. **Actual Suspension - Pharmacy:** License number PHY 45843, issued to
21 Respondent Raley's Central Pharmacy is suspended from pharmacy operations for a period of
22 seven (7) days beginning sixty (60) days after the effective date of this decision.

23 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
24 regulations substantially related to or governing the practice of pharmacy.

25 Respondent shall report any of the following occurrences to the Board, in writing,
26 within 72 hours of such occurrence:

- 27 • an arrest or issuance of a criminal complaint for violation of any provision of the
28 Pharmacy Law, state and federal food and drug laws, or state and federal

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controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

3. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person by an authorized representative, or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable notice, Respondent shall appear in person by an authorized representative for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of their probation. Failure to comply shall be considered a violation of probation.

6. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$13,337.50. Respondent shall make said payments as follows: within 30 thirty days of the effective date of the decision.

The filing of bankruptcy by Respondent shall not relieve Respondent of its responsibility to reimburse the Board its costs of investigation and prosecution.

1 7. **Probation Monitoring Costs.** Respondent shall pay the costs
2 associated with probation monitoring as determined by the Board each and every year of
3 probation. Such costs shall be payable to the Board at the end of each year of probation.
4 Failure to pay such costs shall be considered a violation of probation.

5 8. **Status of License.** Respondent shall, at all times while on probation,
6 maintain an active current license with the Board, including any period during which
7 suspension or probation is tolled.

8 9. **License Surrender while on Probation/Suspension.** Following the
9 effective date of this decision, should Respondent cease practice, or be otherwise unable to
10 satisfy the terms and conditions of probation, Respondent may tender its license to the Board
11 for surrender. The Board shall have the discretion whether to grant the request for surrender
12 or take any other action it deems appropriate and reasonable. Upon formal acceptance of the
13 surrender of the license, Respondent will no longer be subject to the terms and conditions of
14 probation.

15 Upon acceptance of the surrender, Respondent shall relinquish its license to
16 the Board within 10 days of notification by the Board that the surrender is accepted.
17 Respondent may not reapply for any license from the Board for three years from the effective
18 date of the surrender. Respondent shall meet all requirements applicable to the license sought
19 as of the date the application for that license is submitted to the Board.

20 10. **Notice to Employees .** Respondent shall, upon or before the effective
21 date of this decision, ensure that all employees involved in permit operations are made aware
22 of all the terms and conditions of probation, either by posting a notice of the terms and
23 conditions, circulating such notice, or both. If the notice required by this provision is posted, it
24 shall be posted in a prominent place and shall remain posted throughout the probation period.
25 Respondent shall ensure that any employees hired or used after the effective date of this
26 decision are made aware of the terms and conditions by posting a notice, circulating a notice,
27 or both. "Employees" as used in this provision includes all full-time, part-time, temporary and
28 relief employees and independent contractors employed or hired at any time during probation.

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11. **Owners and Officers: Knowledge of Disciplinary Action.**

Respondent shall provide, within 30 days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of 10% or more of the interest in respondent or respondent's stock, and any officer stating that said individuals have read and are familiar with the accusation, stipulations and final decisions in this case.

12. **Violation of Probation.** If Respondent violates probation in any

respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the

Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

13. **Completion of Probation.** Upon successful completion of probation,

Respondent's license will be fully restored.

14. **Community Services Program.** Within 60 days of the effective date

of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent shall provide free services to benefit the community on a regular basis to a community or charitable facility or agency for at least 180 hours within the first three (3) years of probation.

15. **Restitution.** Within 90 days of the effective date of this decision,

Respondent shall pay "Cy Pres" restitution to the California Board of Pharmacy in the amount of \$100,000.00 to be used for enhancement of the Board's enforcement function..

16. **Separate File of Records.** Respondent shall maintain a separate file of

all records pertaining to the acquisition or disposition of all controlled substances.

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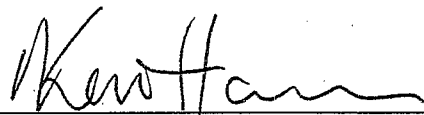
ENDORSEMENT

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

DATED: 6/24/09

EDMUND G. BROWN JR., Attorney General
of the State of California

JANICE K. LACHMAN
Supervising Deputy Attorney General



KENT D. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SA2008301403
Raley's final stip.wpd

Exhibit A
Accusation No. 3165

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
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P.O. Box 944255
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Telephone: (916) 324-7859
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7 Attorneys for Complainant

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9 **BEFORE THE**
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11 In the Matter of the Accusation Against: Case No. 3165

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2928 Ramco Street, Suite 100
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14 Pharmacy Permit No. PHY 45843
15 JAMES PALM
4034 Estate Drive
16 Vacaville, CA 95866
17 Pharmacist License No. RPH 41806
18 Respondents.

A C C U S A T I O N

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
24 2. On or about March 7, 2002, the Board of Pharmacy issued Pharmacy
25 License PHY 45843 to Raley's Central Pharmacy No. 949 (Respondent Raley's).
26 3. On or about July 29, 1988, the Board of Pharmacy issued Pharmacist
27 License No. RPH 41806 to James Palm, (Respondent Palm). Respondent Palm has been the
28 designated "pharmacist-in-charge" at respondent Raley's since 3/7/2002.

JURISDICTION

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

5 5. Section 4081 of the Code states in pertinent part:

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

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

19 6. Section 4113 states in pertinent part:

20 "(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
21 thereof, shall notify the board in writing of the identity and license number of that pharmacist and
22 the date he or she was designated.

23 "(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
24 with a state and federal laws and regulations pertaining to the practice of pharmacy."

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7. California Code of Regulations, Title 16, section 1714, states in pertinent part:

"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured, and distributed..."

(d) Each pharmacist while on duty, shall be responsible for the security of the prescription department including provisions for effective control against theft or diversion of dangerous drugs and devices and records of such drugs and devices...."

8. California Code of Regulations, Title 16, section 1718, states in pertinent part:

"(e) 'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332."

"The controlled substances inventories required by Title 21, CFR, section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

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

10. DRUG CLASSIFICATIONS:

<u>BRAND</u> <u>NAME</u>	<u>GENERIC</u> <u>NAME</u>	<u>DANGEROUS</u> <u>DRUG PER</u> B & PC 4022	<u>CONTROLLED</u> <u>SUBSTANCE</u> PER H & SC	<u>INDICATIONS</u> <u>FOR USE</u>
Vicodin, Norco	Hydrocodone/ Acetaminophen (APAP)	YES	HSC 11056(e)(4)	Pain

<u>BRAND</u>	<u>GENERIC</u>	<u>DANGEROUS</u>	<u>CONTROLLED</u>	<u>INDICATIONS</u>
<u>NAME</u>	<u>NAME</u>	<u>DRUG PER</u>	<u>SUBSTANCE</u>	<u>FOR USE</u>
		B & PC 4022	PER H & SC	
Ambien	Zolpidem	YES	HSC 11057(d)(32)	Anxiety
Lyrica	Pregablin	YES	CFR 1308.15(e)(1)	Neuropathic Pain
	Propoxyphene Napsylate/ Acetaminophen	YES	HSC 11057	Pain
	Clonazepam	YES	HSC 11057(d)(7)	Anxiety
	Diphenoxylate/ Atropine	YES	HSC 11058(c)(4)	Anti-diarrheal
	Temazepam	YES	HSC 11057(d)(29)	Anxiety
	Butorphanol	YES	HSC 11057(c)(3)	Migraine
	Acetaminophen/ Codeine	YES	HSC 11056	Pain
	Diazepam	YES	HSC 11057(d)(9)	Anxiety
	Alprazolam	YES	HSC 11057(d)(1)	Anxiety
	Lorazepam	YES	HSC 11057(d)(16)	Anxiety
	Phentermine	YES	HSC 11057(f)(4)	Anorexiant
Oxandrin	Oxandrolone	YES	HSC 11056(f)(23)	Androgen
	Hydrocodone/ Ibuprofen	YES	HSC 11056	Pain
Lunesta	Zopiclone	YES	CFR 1308.14(c)(51)	Insomnia
Provigil	Modafinil	YES	HSC 11057(f)(3)	Narcolepsy
	Acetaminophen/ Dichloralphen- azone/Isometheptene	YES		Migraine

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STATEMENT OF FACTS

11. On and between the dates of March of 2006 and 8/13/2007, pharmacy clerk, Capernaum Chapman, who was employed at respondent Raley's stole an undetermined number of various controlled substances and dangerous drugs. The theft was carried out by Mr. Chapman placing bottles of newly received controlled substances and dangerous drugs in a garbage can after the pharmacist had finished the check-in process. Chapman would later take out the garbage and dump it into the dumpsters behind the facility. The trash containers were normally secured by locks, but were left open by Chapman. After his shift was over, Chapman would return to the dumpsters and remove the bags.

12. In order to cover up his theft, Chapman would then access the computer system and adjust the inventory levels on the items he had diverted earlier into the garbage cans. Chapman had complete access and ability to manipulate Raley's inventory levels without tracking and supervision. Raley's computer system did not track user access and changes to their inventory levels. There were no warnings in Raley's inventory system or financial auditing to indicate a diversion concern.

13. On 8/13/07 Chapman did not report for work. Chapman had been arrested and was in jail charged with the sale or transport of controlled substances. Chapman was subsequently terminated for job abandonment.

14. An internal audit covering a period of 23 months (9/16/2005 to 8/15/2007) revealed a preliminary shortage of approximately 225,816 tablets of generic Norco and Vicodin. There were also shortages and overages in a number of other controlled substances and dangerous drugs.

RESPONDENT RALEY'S
FIRST CAUSE FOR DISCIPLINE
(Unsecured Pharmacy)

15. Respondent Raley's is subject to disciplinary action under Title 16 CCR Section 1714(b) in that they failed to provide effective control on the security of the prescription department against theft of controlled substances/dangerous drugs as set forth in paragraphs 11-14 above.

SECOND CAUSE FOR DISCIPLINE
(Failure to Maintain Current Inventory)

16. Respondent Raley's Central Pharmacy No. 949 is subject to disciplinary action under California Code of Regulations, Title 16, section 1718 in conjunction with Business and Professions Code section 4081 in that it failed to maintain complete accountability of all controlled substances/dangerous drugs between the dates of March 2006 and August, 2007 as follows:

SHORTAGE

- a. Ambien (5mg - 67 dosage units, 10mg - 254 dosage units, CR 12.5mg - 74 dosage units);
- b. Lyrica (75mg - 19 dosage units, 150mg - 1 dosage unit);
- c. Vicodin (5mg/500mg - 12 dosage units, 7.5mg/750mg - 23 dosage units);
- d. Propoxyphene-Napsylate/APAP - 129 dosage units;
- e. Clonazepam (0.5mg - 202 dosage units, 1mg - 195 dosage units, 2mg - 49 dosage units);
- f. Diphenoxylate/Atropine - 498 dosage units;
- g. Temazepam (15mg - 45 dosage units, 30mg - 26 dosage units);
- h. Hydrocodone/APAP (5mg/500mg - 24,937 dosage units, 7.5mg/500mg - 1011 dosage units, 7.5mg/750mg - 678 dosage units, 10mg/650mg - 1 dosage unit, 10mg/500mg - 38 dosage units, 10mg/325mg - 200,654 dosage units);
- i. APAP/Codeine (300mg/30mg - 229 dosage units, 300mg/60mg - 18 dosage units);
- j. Diazepam 5mg - 22 dosage units;
- k. Alprazolam (0.25mg - 393 dosage units, 0.5mg - 432 dosage units, 1mg - 11 dosage units);
- l. Lorazepam (0.5mg - 249 dosage units, 1mg - 1,044 dosage units);
- m. Phentermine 37.5mg - 20 dosage units;
- n. Oxandrin 2.5mg - 77 dosage units;

- 1 o. Zolpidem (5mg - 4 dosage units, 10mg - 73 dosage units);
2 p. Hydrocodone/Tibuprofen 7.5mg/200mg - 52 dosage units;
3 q. Lunesta 2mg - 333 dosage units; & Provigil 200mg - 483 dosage units.

4 **OVERAGE**

- 5 r. Diazepam 10mg - 14 dosage units;
6 s. Lorazepam 2mg - 1 dosage unit;
7 t. Lunesta 3mg - 5 dosage units;
8 u. Acetaminophen/Dichloralphenazone/Isometheptene - 10 dosage units.

9 **RESPONDENT PALM**
10 **FIRST CAUSE FOR DISCIPLINE**

(Unsecured Pharmacy/Failure to Provide Effective Control)

11 17. Respondent, James Palm is subject to disciplinary action under Title 16
12 CCR Section 1714(D) in that as pharmacist-in-charge, he failed to provide effective control on
13 the security of the prescription department against theft of controlled substances/dangerous drugs
14 as set forth in paragraphs 11-14 above.

15 **SECOND CAUSE FOR DISCIPLINE**

(Failure to Maintain Complete Accountability of Controlled Substances)

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17 18. Respondent, James Palm is subject to disciplinary action under Title 16
18 CCR Section 1718, in conjunction with Business and Professions Code section 4081, pursuant to
19 Business and Professions Code section 4113(b) in that as pharmacist-in-charge, he failed to
20 maintain complete accountability of all controlled substances/dangerous drugs at Raley's during
21 the relevant time period as set forth in paragraphs 11-14 and 16 above.

22 **PRAYER**

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

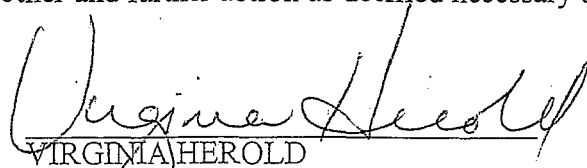
- 25 1. Revoking or suspending Pharmacy License Number PHY 45843, issued to
26 Raley's Central Pharmacy No. 949;
27 2. Revoking or suspending Pharmacist License No. RPH 41806, issued to
28 James Palm;

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3. Ordering Raley's Central Pharmacy No. 949 and James Palm to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/13/08



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

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