

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

In the Matter of the Accusation Against:

Case No. 4577

**DUBIN MEDICAL, INC.**  
4655 Cass Street, #104  
San Diego, CA 92109

Wholesale Permit No. WLS 6797

and

**RAUL J. BARAJAS**  
970 Turquoise Street  
San Diego, CA 92109

Designated Representative License No. EXC  
18131

Respondents.

**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

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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*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. 4577

12 **DUBIN MEDICAL, INC.**  
13 **4655 Cass Street, #104**  
14 **San Diego, CA 92109**

**STIPULATED SETTLEMENT  
AND DISCIPLINARY ORDER**

15 **Wholesale Permit No. WLS 6797**

16 **And**

17 **RAUL J. BARAJAS**  
18 **970 Turquoise Street**  
**San Diego, CA 92109**

19 **Designated Representative License No. EXC 18131**

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 Nicole R. Trama, Deputy Attorney  
28 General.



1 cross-examine the witnesses against them; the right to present evidence and to testify on their own  
2 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
3 production of documents; the right to reconsideration and court review of an adverse Decision;  
4 and all other rights accorded by the California Administrative Procedure Act and other applicable  
5 laws.

6 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
7 every right set forth above.

8 CULPABILITY

9 10. Respondents understand and agree that the charges and allegations in First Amended  
10 Accusation No. 4577, if proven at a hearing, constitute cause for imposing discipline upon  
11 Wholesale Permit 6797 and Designated Representative License No. EXC 18131.

12 11. For the purpose of resolving the First Amended Accusation without the expense and  
13 uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could  
14 establish a factual basis for the charges in the First Amended Accusation, and that Respondents  
15 hereby give up their right to contest those charges.

16 12. Respondents agree that Wholesale Permit 6797 and Designated Representative  
17 License No. EXC 18131 are subject to discipline and they agree to be bound by the Board's  
18 probationary terms as set forth in the Disciplinary Order below.

19 CONTINGENCY

20 13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents  
21 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may  
22 communicate directly with the Board regarding this stipulation and settlement, without notice to  
23 or participation by Respondents or its counsel. By signing the stipulation, Respondents  
24 understand and agree that they may not withdraw their agreement or seek to rescind the  
25 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
26 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
27 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
28

1 the parties, and the Board shall not be disqualified from further action by having considered this  
2 matter.

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

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

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

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Wholesale Permit No. WLS 6797 issued to Respondent  
17 Dubin Medical, Inc. (Respondent Dubin) and Designated Representative License No. EXC 18131  
18 to Raul J. Barajas (Respondent Barajas) are revoked. However, the revocation is stayed and  
19 Respondents are placed on probation for three (3) years on the following terms and conditions.

20 **1. Obey All Laws**

21 Respondents shall obey all state and federal laws and regulations.

22 Respondents shall report any of the following occurrences to the Board, in writing, within  
23 seventy-two (72) hours of such occurrence:

- 24  an arrest or issuance of a criminal complaint for violation of any provision of the  
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
26 substances laws  
27  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
28 criminal complaint, information or indictment

- 1            a conviction of any crime  
2            discipline, citation, or other administrative action filed by any state or federal agency  
3           which involves Respondent's Wholesale Permit or Designated Representative  
4           License or which is related to the practice of pharmacy or the manufacturing,  
5           obtaining, handling or distributing, billing, or charging for any drug, device or  
6           controlled substance.

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

8           **2. Report to the Board**

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

17          **3. Interview with the Board**

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

23          **4. Cooperate with Board Staff**

24          Respondents shall cooperate with the Board's inspection program and with the Board's  
25          monitoring and investigation of Respondents' compliance with the terms and conditions of their  
26          probation. Failure to cooperate shall be considered a violation of probation.

27          **5. Reimbursement of Board Costs**

28          As a condition precedent to successful completion of probation, Respondent Dubin shall

1 pay to the Board its costs of investigation and prosecution in the amount of \$7,513.50.

2 Respondent Dubin shall make said payments as follows: Commencing on the effective date of  
3 this Decision and on the first of each month thereafter, Respondent Dubin shall pay \$500.00 per  
4 month until paid in full. There shall be no deviation from this schedule absent prior written  
5 approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be  
6 considered a violation of probation.

7 As a condition precedent to successful completion of probation, Respondent Barajas shall  
8 pay to the Board its costs of investigation and prosecution in the amount of \$2,504.50.

9 Respondent Barajas shall make said payments as follows: Commencing on the effective date of  
10 this Decision and on the first of each month thereafter, Respondent Barajas shall pay \$150.00 per  
11 month until paid in full. There shall be no deviation from this schedule absent prior written  
12 approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be  
13 considered a violation of probation.

14 The filing of bankruptcy by Respondents shall not relieve Respondents of their  
15 responsibility to reimburse the Board its costs of investigation and prosecution.

16 **6. Probation Monitoring Costs**

17 Respondents shall pay any costs associated with probation monitoring as determined by the  
18 Board each and every year of probation. Such costs shall be payable to the Board on a schedule  
19 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed  
20 shall be considered a violation of probation.

21 **7. Status of License**

22 Respondent Dubin shall, at all times while on probation, maintain current licensure with the  
23 Board. If Respondent Dubin submits an application to the Board, and the application is approved,  
24 for a change of location, change of permit or change of ownership, the Board shall retain  
25 continuing jurisdiction over the license, and Respondent Dubin shall remain on probation as  
26 determined by the Board. Failure to maintain current licensure shall be considered a violation of  
27 probation. If Respondent Dubin's license expires or is cancelled by operation of law or otherwise  
28 at any time during the period of probation, including any extensions thereof or otherwise, upon

1 renewal or reapplication Respondent Dubin's license shall be subject to all terms and conditions  
2 of this probation not previously satisfied.

3 Respondent Barajas shall, at all times while on probation, maintain an active, current  
4 designated representative license with the Board, including any period during which suspension  
5 or probation is tolled. Failure to maintain an active, current license shall be considered a  
6 violation of probation. If Respondent Barajas' designated representative license expires or is  
7 cancelled by operation of law or otherwise at any time during the period of probation, including  
8 any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent  
9 Barajas' license shall be subject to all terms and conditions of this probation not previously  
10 satisfied.

11 **8. License Surrender While on Probation/Suspension**

12 Following the effective date of this Decision, should Respondent Dubin discontinue  
13 business, Respondent Dubin may tender the premises license to the Board for surrender. The  
14 Board or its designee shall have the discretion whether to grant the request for surrender or take  
15 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
16 the license, Respondent Dubin will no longer be subject to the terms and conditions of probation.  
17 Upon acceptance of the surrender, Respondent Dubin shall relinquish the premises wall and  
18 renewal license to the Board within ten (10) days of notification by the Board that the surrender is  
19 accepted. Respondent Dubin shall further submit a completed Discontinuance of Business form  
20 according to Board guidelines and shall notify the Board of the records inventory transfer.  
21 Respondent Dubin may not apply for any new licensure from the Board for three (3) years from  
22 the effective date of the surrender. Respondent Dubin shall meet all requirements applicable to  
23 the license sought as of the date the application for that license is submitted to the Board.  
24 Respondent Dubin further stipulates that he or she shall reimburse the Board for its costs of  
25 investigation and prosecution prior to the acceptance of the surrender.

26 Following the effective date of this Decision, should Respondent Barajas cease work due to  
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
28 respondent may tender his designated representative license to the Board for surrender. The



1 Board or its designee shall have the discretion whether to grant the request for surrender or take  
2 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
3 the license, Respondent Barajas will no longer be subject to the terms and conditions of  
4 probation. This surrender constitutes a record of discipline and shall become a part of the  
5 Respondent Barajas' license history with the Board. Upon acceptance of the surrender,  
6 Respondent Barajas shall relinquish his designated representative license to the Board within ten  
7 (10) days of notification by the Board that the surrender is accepted. Respondent Barajas may not  
8 reapply for any license, permit, or registration from the Board for three (3) years from the  
9 effective date of the surrender. Respondent Barajas shall meet all requirements applicable to the  
10 license sought as of the date the application for that license is submitted to the Board.

11 **9. Notice to Employees**

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

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

25 **10. Owners and Officers: Knowledge of the Law**

26 Respondent Dubin shall provide, within thirty (30) days after the effective date of this  
27 Decision, signed and dated statements from its owners, including any owner or holder of ten  
28 percent (10%) or more of the interest in Respondent or Respondent's stock, and any officer,

1 stating under penalty of perjury that said individuals have read and are familiar with state and  
2 federal laws and regulations governing the practice of pharmacy. The failure to timely provide  
3 said statements under penalty of perjury shall be considered a violation of probation.

4 **11. Posted Notice of Probation**

5 Respondent Dubin shall prominently post a probation notice provided by the Board in a  
6 place conspicuous and readable to the public. The probation notice shall remain posted during  
7 the entire period of probation.

8 Respondent Dubin shall not, directly or indirectly, engage in any conduct or make any  
9 statement which is intended to mislead or is likely to have the effect of misleading any patient,  
10 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
11 of the licensed entity.

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

13 **12. No Purchasing From Pharmacies**

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

16 **13. Notice to Employers**

17 During the period of probation, Respondent Barajas shall notify all present and prospective  
18 employers of the Decision in case number 4577 and the terms, conditions and restrictions  
19 imposed on Respondent Barajas by the Decision, as follows:

20 Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of  
21 Respondent Barajas undertaking any new employment, Respondent Barajas shall cause his direct  
22 supervisor, designated representative-in-charge (including each new designated representative-in-  
23 charge employed during Respondent's tenure of employment) and owner to report to the Board in  
24 writing acknowledging that the listed individual(s) has/have read the Decision in case number  
25 4577 and terms and conditions imposed thereby. It shall be Respondent Barajas' responsibility to  
26 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

27 If Respondent Barajas works for or is employed by or through a pharmacy employment  
28 service, Respondent Barajas must notify his direct supervisor, designated representative-in-charge

1 and owner at each entity licensed by the Board of the terms and conditions of the Decision in case  
2 number 4577 in advance of the Respondent Barajas commencing work at each licensed entity. A  
3 record of this notification must be provided to the board upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
5 (15) days of Respondent Barajas undertaking any new employment by or through a pharmacy  
6 employment service, Respondent Barajas shall cause his direct supervisor with the pharmacy  
7 employment service to report to the Board in writing acknowledging that he has read the decision  
8 in case number 4577 and the terms and conditions imposed thereby. It shall be Respondent  
9 Barajas' responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
10 acknowledgment(s) to the Board.

11 Failure to timely notify present or prospective employer(s) or to cause that/those  
12 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of  
13 probation.

14 "Employment" within the meaning of this provision shall include any full-time,  
15 part-time, temporary or relief service or pharmacy management service as a  
16 designated representative or in any position for which a designated representative  
17 license is a requirement or criterion for employment, whether the respondent is  
18 considered an employee or independent contractor or volunteer.

19 **14. No Being Designated Representative-in-Charge at Other Licensed Entities**

20 During the period of probation, Respondent Barajas may be the designated representative-  
21 in-charge of Respondent Dubin (Wholesale Permit No. WLS 6797) only. Respondent Barajas  
22 shall not be the designated representative-in-charge of any other entity licensed by the Board  
23 unless otherwise specified in this order. Assumption of any such unauthorized supervision  
24 responsibilities shall be considered a violation of probation.

25 **15. Violation of Probation**

26 If a Respondents have not complied with any term or condition of probation, the Board  
27 shall have continuing jurisdiction over Respondents' licenses, and probation shall be  
28 automatically extended until all terms and conditions have been satisfied or the Board has taken

1 other action as deemed appropriate to treat the failure to comply as a violation of probation, to  
2 terminate probation, and to impose the penalty that was stayed.

3 If Respondents violates probation in any respect, the Board, after giving Respondents notice  
4 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
5 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
6 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
7 a petition to revoke probation or an accusation is filed against Respondents during probation, the  
8 Board shall have continuing jurisdiction and the period of probation shall be automatically  
9 extended until the petition to revoke probation or accusation is heard and decided.

10 **16. Completion of Probation**

11 Upon written notice by the Board or its designee indicating successful completion of  
12 probation, Respondents' licenses will be fully restored.

13 **17. Notification of a Change in Name, Residence Address, Mailing Address or**  
14 **Employment**

15 Respondent Barajas shall notify the Board in writing within ten (10) days of any change of  
16 employment. Said notification shall include the reasons for leaving and the address of the new  
17 employer, supervisor and owner and work schedule, if known. Respondent Barajas shall further  
18 notify the Board in writing within ten (10) days of a change in name, residence address and  
19 mailing address, or phone number.

20 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or  
21 phone number(s) shall be considered a violation of probation.

22 **18. Tolling of Probation**

23 Except during periods of suspension, Respondent Barajas shall, at all times while on  
24 probation, be employed as a designated representative in California for a minimum of forty (40)  
25 hours per calendar month. Any month during which this minimum is not met shall toll the period  
26 of probation, i.e., the period of probation shall be extended by one month for each month during  
27 which this minimum is not met. During any such period of tolling of probation, Respondent  
28 Barajas must nonetheless comply with all terms and conditions of probation.

1           Should Respondent Barajas, regardless of residency, for any reason (including vacation)  
2 cease working as a designated representative for a minimum of forty (40) hours in California, he  
3 must notify the board in writing within ten (10) days of cessation of work and must further notify  
4 the board in writing within ten (10) days of the resumption of work. Any failure to provide such  
5 notification(s) shall be considered a violation of probation.

6           It is a violation of probation for Respondent Barajas' probation to remain tolled pursuant to  
7 the provisions of this condition for a total period, counting consecutive and non-consecutive  
8 months, exceeding thirty-six (36) months.

9           "Cessation of work" means any calendar month during which Respondent  
10 Barajas is not working as a designated representative for at least forty (40) hours as a  
11 designated representative as defined by Business and Professions Code section 4053.

12          "Resumption of work" means any calendar month during which respondent is  
13 working as a designated representative for at least forty (40) hours as a designated  
14 representative as defined by Business and Professions Code section 4053.

15          **19. No Ownership of Licensed Premises**

16          Respondent Barajas shall not own, have any legal or beneficial interest in, or serve as a  
17 manager, administrator, member, officer, director, trustee, associate, or partner of any business,  
18 firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent  
19 Barajas shall sell or transfer any legal or beneficial interest in any entity licensed by the Board  
20 within ninety (90) days following the effective date of this decision and shall immediately  
21 thereafter provide written proof thereof to the board. Failure to timely divest any legal or  
22 beneficial interest(s) or provide documentation thereof shall be considered a violation of  
23 probation.

24          **20. Educational Program**

25          Within sixty (60) calendar days of the effective date of this Decision, Respondent Barajas  
26 shall submit to the Board or its designee, for prior approval, an appropriate educational program  
27 which consists of at least five (5) hours of pharmacy law regarding drug distribution, drug  
28 recordkeeping and drug storage. Failure to timely submit or complete the approved educational

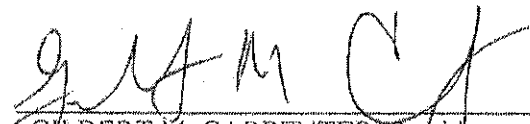
1 program shall be considered a violation of probation. The period of probation shall be  
2 automatically extended until such education is successfully completed and written proof, in a  
3 form acceptable to the Board, is provided to the Board or its designee.

4 Following the completion of each course, the Board or its designee may require Respondent  
5 Barajas, at his own expense, to take an approved examination to test his knowledge of the course.  
6 If Respondent Barajas does not achieve a passing score on this examination, this failure shall be  
7 considered a violation of probation. Any such examination failure shall require Respondent  
8 Barajas to take another course approved by the Board in the same subject area.

9 ACCEPTANCE


10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
11 discussed it with my attorney, Ivan Petrzeka, Pharm.D., J.D., M.B.A. I understand the  
12 stipulation and the effect it will have on my Wholesale Permit. I enter into this Stipulated  
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
14 bound by the Decision and Order of the Board of Pharmacy.

15  
16 DATED: 2/22/16

  
17 GILBERT M. CARPENTER, President and authorized  
18 agent on behalf of DUBIN MEDICAL, INC.  
19 Respondent

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
21 discussed it with my attorney, Ivan Petrzeka, Pharm.D., J.D., M.B.A. I understand the  
22 stipulation and the effect it will have on my Designated Representative License. I enter into this  
23 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
24 to be bound by the Decision and Order of the Board of Pharmacy.

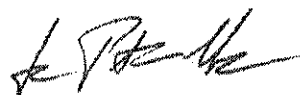
25  
26 DATED: 2/22/16

  
27 RAUL J. BARAJAS  
28 Respondent

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

DATED: February 24, 2016



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

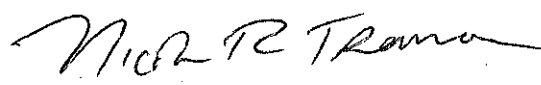
ENDORSEMENT

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

Dated: 2/25/2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



NICOLE R. TRAMA  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 4577**



1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 NICOLE R. TRAMA  
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4 State Bar No. 263607  
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*Attorneys for Complainant*

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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

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13 **4655 Cass Street, #104**  
14 **San Diego, CA 92109**

**FIRST AMENDED ACCUSATION**

15 **Wholesale Permit No. WLS 6797**

16 **and**

17 **RAUL J. BARAJAS**  
18 **970 Turquoise Street**  
19 **San Diego, CA 92109**

20 **Designative Representative License No.**  
**EXC 18131**

Respondents.

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 November 13, 2002, the Board of Pharmacy issued Wholesale Permit  
27 Number WLS 4212 to Dubin Medical, Inc., doing business as Dubin Medical, Inc. (Respondent  
28 Dubin). On or about September 11, 2015, Respondent Dubin moved addresses to 4655 Cass

1 Street, #104, San Diego, CA 92109, and subsequently cancelled Wholesale Permit Number WLS  
2 4212. On or about September 11, 2015, the Board issued Wholesale Permit Number 6797 to  
3 Respondent Dubin at their new location. The Wholesale Permit will expire on September 1,  
4 2016, unless renewed.

5 3. On or about June 1, 2005, the Board of Pharmacy issued Designative Representative  
6 License Number EXC 18131 to Raul J. Barajas (Respondents Barajas). The Designative  
7 Representative License was in full force and effect at all times relevant to the charges brought  
8 herein and will expire on June 1, 2016, unless renewed.

### 9 JURISDICTION

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

13 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
14 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
15 Act [Health & Safety Code, § 11000 et seq.].

16 6. Section 4300(a) of the Code provides that every license issued by the Board may be  
17 suspended or revoked.

18 7. Section 4300.1 of the Code states:

19 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
20 by operation of law or by order or decision of the board or a court of law, the  
21 placement of a license on a retired status, or the voluntary surrender of a license by a  
22 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
23 investigation of, or action or disciplinary proceeding against, the licensee or to render  
24 a decision suspending or revoking the license.

### 25 STATUTORY PROVISIONS

26 8. Section 4022 of the Code states:

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

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

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

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

7 9. Section 4022.5 of the Code states:

8 (a) "Designated representative" means an individual to whom a license has  
9 been granted pursuant to Section 4053. A pharmacist fulfilling the duties of  
10 Section 4053 shall not be required to obtain a license as a designated  
11 representative.

12 (b) "Designated representative-in-charge" means a designated representative  
13 or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer  
14 and approved by the board as the supervisor or manager responsible for ensuring  
15 the wholesaler's or veterinary food-animal drug retailer's compliance with all state  
16 and federal laws and regulations pertaining to practice in the applicable license  
17 category.

18 10. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include  
19 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,  
20 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes  
21 possession of, any drug or device included in Section 4022."

22 11. Section 4053 of the Code states in part:

23 (a) Notwithstanding Section 4051, the board may issue a license as a  
24 designated representative to provide sufficient and qualified supervision in a  
25 wholesaler or veterinary food-animal drug retailer. The designated representative  
26 shall protect the public health and safety in the handling, storage, and shipment of  
27 dangerous drugs and dangerous devices in the wholesaler or veterinary food-  
28 animal drug retailer.

....

12. Section 4059.5, subdivision (a) of the Code states:

Except as otherwise provided in this chapter, dangerous drugs or dangerous  
devices may only be ordered by an entity licensed by the board and shall be  
delivered to the licensed premises and signed for and received by a pharmacist.  
Where a licensee is permitted to operate through a designated representative, the  
designated representative shall sign for and receive the delivery.

1 13. Section 4126.5 of the Code states:

2 (a) A pharmacy may furnish dangerous drugs only to the following:

3 (1) A wholesaler owned or under common control by the wholesaler from  
4 whom the dangerous drug was acquired.

5 (2) The pharmaceutical manufacturer from whom the dangerous drug was  
6 acquired.

7 (3) A licensed wholesaler acting as a reverse distributor.

8 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a  
9 dangerous drug that could result in the denial of health care. A pharmacy  
10 furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity  
11 sufficient to alleviate the temporary shortage.

12 (5) A patient or to another pharmacy pursuant to a prescription or as  
13 otherwise authorized by law.

14 (6) A health care provider that is not a pharmacy but that is authorized to  
15 purchase dangerous drugs.

16 (7) To another pharmacy under common control.

17 (b) Notwithstanding any other provision of law, a violation of this section  
18 may subject the person or persons who committed the violation to a fine not to  
19 exceed the amount specified in Section 125.9 for each occurrence pursuant to a  
20 citation issued by the board.

21 (c) Amounts due from any person under this section on or after January 1,  
22 2005, shall be offset as provided under Section 12419.5 of the Government Code.  
23 Amounts received by the board under this section shall be deposited into the  
24 Pharmacy Board Contingent Fund.

25 (d) For purposes of this section, "common control" means the power to  
26 direct or cause the direction of the management and policies of another person  
27 whether by ownership, by voting rights, by contract, or by other means.

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

15. Section 4163 of the Code states:

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

(b) Dangerous drugs or dangerous devices shall be acquired from a person  
authorized by law to possess or furnish dangerous drugs or dangerous devices. If  
the person acquiring the dangerous drugs or dangerous devices is a wholesaler, the

1 obligation of the wholesaler shall be limited to obtaining confirmation of licensure  
2 of those sources from whom it has not previously acquired dangerous drugs or  
3 dangerous devices.

4 16. Section 4301 of the Code states in pertinent part:

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

9 . . . .

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

15 . . . .

#### 16 **COST RECOVERY**

17 17. 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, with failure of the licentiate to comply subjecting the license to not being  
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
22 included in a stipulated settlement.

#### 23 **FACTUAL ALLEGATIONS**

24 18. Since August 20, 2007, Respondent Barajas has been the Designated Representative  
25 In Charge (DRIC) of Respondent Dubin.

26 19. For a period of time that included but was not necessarily limited to dates on and/or  
27 between September 4, 2009 and June 27, 2012, Respondents were engaged in a business practice  
28 that involved the purchase of dangerous drugs from pharmacies and the re-sale of those  
dangerous drugs to wholesalers and pharmacies within and outside California. During that time  
period, on 252 different occasions, Respondents purchased 755 dangerous drugs from at least

1 three different pharmacies, Balboa Pharmacy, Avenel Pharmacy, and My Healthmart Pharmacy.<sup>1</sup>  
2 Respondent Dubin was not the wholesaler that had supplied the dangerous drugs to any of these  
3 pharmacies. With respect to Avenel Pharmacy, Respondents purchased 108 dangerous drugs on  
4 56 different dates.

5 20. During and/or prior to that time period, Respondents solicited pharmacies to supply  
6 Respondents with dangerous drugs that Respondents would identify to the pharmacies as the  
7 desired drugs. At the direction and/or pursuant to the encouragement of Respondents, the  
8 pharmacies would acquire the dangerous drugs listed by Respondents, typically from the  
9 pharmacies' primary wholesaler(s).<sup>2</sup> The pharmacies acted as purchasing agents for  
10 Respondents, buying drugs for Respondents, not their own patients. None of the pharmacies that  
11 Respondents purchased drugs from were licensed by the Board as wholesalers. The drugs  
12 acquired by the pharmacies were sold to Respondent Dubin.

13 21. Respondents re-sold the drugs that were acquired from pharmacies, to wholesalers  
14 and pharmacies within and outside California, often at a markup. A sampling of purchase and re-  
15 sale transactions revealed markups of up to 550 percent. For example, on April 15, 2011,  
16 Respondents purchased Magnesium Sulfate from Balboa Pharmacy for \$30.00 per unit for a total  
17 cost of \$1,800; but then resold it to Madigan Army Medical Center on April 18, 2011 at \$195.00  
18 per unit for a total price of \$11,700, which is a 550 percent mark-up.

19 22. The pharmacies utilized by Respondents were community pharmacies, yet all or  
20 nearly all of the drugs that were purchased by these pharmacies and re-sold to Respondents were  
21 drugs primarily used in hospital, medical centers, or other urgent-care environments.

22  
23  
24 <sup>1</sup> Balboa Pharmacy holds Pharmacy Permit Number PHY 45633, issued by the Board of  
25 Pharmacy. Avenel Pharmacy holds Non-Resident Pharmacy (NRP) Permit NRP 849, issued by  
26 the Board of Pharmacy. My Healthmart Pharmacy holds Pharmacy Permit Number PHY 48654,  
27 issued by the Board of Pharmacy.

28 <sup>2</sup> For the purposes of this Accusation, "primary wholesaler" refers to the wholesaler from  
which the pharmacy purchased the bulk of its dangerous drugs, and/or with which the pharmacy  
enjoyed a contractual relationship giving the pharmacy an "account" with the wholesaler. Most if  
not all pharmacies establish a "primary wholesaler" account relationship with a single wholesaler.  
The pharmacy is issued an account number to use in ordering from the primary wholesaler.

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**FIRST CAUSE FOR DISCIPLINE**

**(Aiding or Abetting Unlicensed Wholesalers)**

23. Respondents are subject to disciplinary action under Code section 4301(o), for violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged, assisted in, abetted, or conspired toward, transactions violating sections 4160 and 4163 of the Code, in that pharmacies that purchased dangerous drugs on behalf of Respondents, and/or sold dangerous drugs to Respondents for re-sale, by doing so acted as unlicensed wholesalers, as set forth in paragraphs 18 through 22, which are incorporated herein by reference.

**SECOND CAUSE FOR DISCIPLINE**

**(Purchasing Dangerous Drugs Under Unauthorized Conditions)**

24. Respondents are subject to disciplinary action under Code section 4301(o), for violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged, assisted in, abetted, or conspired toward, transactions violating section 4126.5 of the Code, by purchasing dangerous drugs from pharmacies under unauthorized conditions, as set forth in paragraphs 18 through 22, which are incorporated herein by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

25. Respondents are subject to disciplinary action under Code section 4301, in that the acts described in paragraphs 18 through 22 constitute unprofessional conduct.

**PRAYER**

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

1. Revoking or suspending Wholesaler Permit Number WLS 6797 issued to Dubin Medical, Inc., doing business as Dubin Medical, Inc.;
2. Revoking or suspending Designated Representative License Number EXC 18131 issued to Raul J. Barajas;

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3. Ordering Respondents 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: 12/14/15 Virginia Herold

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

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*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. 4577

12 **DUBIN MEDICAL, INC.**  
13 **970 Turquoise Street**  
14 **San Diego, CA 92109**

**ACCUSATION**

15 **Wholesale Permit No. WLS 4212**

16 **and**

17 **RAUL J. BARAJAS**  
18 **970 Turquoise Street**  
**San Diego, CA 92109**

19 **Designative Representative License No.**  
**EXC 18131**

20 Respondents.

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 November 13, 2002, the Board of Pharmacy issued Wholesale Permit  
27 Number WLS 4212 to Dubin Medical, Inc., doing business as Dubin Medical, Inc. (Respondent  
28

1 Dubin). The Wholesale Permit was in full force and effect at all times relevant to the charges  
2 brought herein and will expire on November 1, 2015, unless renewed.

3 3. On or about June 1, 2005, the Board of Pharmacy issued Designative Representative  
4 License Number EXC 18131 to Raul J. Barajas (Respondents Barajas). The Designative  
5 Representative License was in full force and effect at all times relevant to the charges brought  
6 herein and will expire on June 1, 2016, unless renewed.

### 7 JURISDICTION

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

11 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
12 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
13 Act [Health & Safety Code, § 11000 et seq.].

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be  
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

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

### 21 STATUTORY PROVISIONS

22 8. Section 4022 of the Code states:

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

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

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

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

3 9. Section 4022.5 of the Code states:

4 (a) "Designated representative" means an individual to whom a license has  
5 been granted pursuant to Section 4053. A pharmacist fulfilling the duties of  
6 Section 4053 shall not be required to obtain a license as a designated  
7 representative.

8 (b) "Designated representative-in-charge" means a designated representative  
9 or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer  
10 and approved by the board as the supervisor or manager responsible for ensuring  
11 the wholesaler's or veterinary food-animal drug retailer's compliance with all state  
12 and federal laws and regulations pertaining to practice in the applicable license  
13 category.

14 10. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include  
15 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,  
16 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes  
17 possession of, any drug or device included in Section 4022."

18 11. Section 4053 of the Code states in part:

19 (a) Notwithstanding Section 4051, the board may issue a license as a  
20 designated representative to provide sufficient and qualified supervision in a  
21 wholesaler or veterinary food-animal drug retailer. The designated representative  
22 shall protect the public health and safety in the handling, storage, and shipment of  
23 dangerous drugs and dangerous devices in the wholesaler or veterinary food-  
24 animal drug retailer.

25 12. Section 4059.5, subdivision (a) of the Code states:

26 Except as otherwise provided in this chapter, dangerous drugs or dangerous  
27 devices may only be ordered by an entity licensed by the board and shall be  
28 delivered to the licensed premises and signed for and received by a pharmacist.  
Where a licensee is permitted to operate through a designated representative, the  
designated representative shall sign for and receive the delivery.

13. Section 4126.5 of the Code states:

(a) A pharmacy may furnish dangerous drugs only to the following:

(1) A wholesaler owned or under common control by the wholesaler from  
whom the dangerous drug was acquired.

1 (2) The pharmaceutical manufacturer from whom the dangerous drug was  
acquired.

2 (3) A licensed wholesaler acting as a reverse distributor.

3 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a  
4 dangerous drug that could result in the denial of health care. A pharmacy  
5 furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity  
6 sufficient to alleviate the temporary shortage.

7 (5) A patient or to another pharmacy pursuant to a prescription or as  
8 otherwise authorized by law.

9 (6) A health care provider that is not a pharmacy but that is authorized to  
10 purchase dangerous drugs.

11 (7) To another pharmacy under common control.

12 (b) Notwithstanding any other provision of law, a violation of this section  
13 may subject the person or persons who committed the violation to a fine not to  
14 exceed the amount specified in Section 125.9 for each occurrence pursuant to a  
15 citation issued by the board.

16 (c) Amounts due from any person under this section on or after January 1,  
17 2005, shall be offset as provided under Section 12419.5 of the Government Code.  
18 Amounts received by the board under this section shall be deposited into the  
19 Pharmacy Board Contingent Fund.

20 (d) For purposes of this section, "common control" means the power to  
21 direct or cause the direction of the management and policies of another person  
22 whether by ownership, by voting rights, by contract, or by other means.

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

27 15. Section 4163 of the Code states:

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

(b) Dangerous drugs or dangerous devices shall be acquired from a person  
authorized by law to possess or furnish dangerous drugs or dangerous devices. If  
the person acquiring the dangerous drugs or dangerous devices is a wholesaler, the  
obligation of the wholesaler shall be limited to obtaining confirmation of licensure  
of those sources from whom it has not previously acquired dangerous drugs or  
dangerous devices.

1 16. Section 4301 of the Code states in pertinent part:

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

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

11 **COST RECOVERY**

12 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licentiate found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
17 included in a stipulated settlement.

18 **FACTUAL ALLEGATIONS**

19 18. Since August 20, 2007, Respondent Barajas has been the Designated Representative  
20 In Charge (DRIC) of Respondent Dubin.

21 19. For a period of time that included but was not necessarily limited to dates on and/or  
22 between September 4, 2009 and June 27, 2012, Respondents were engaged in a business practice  
23 that involved the purchase of dangerous drugs from pharmacies and the re-sale of those  
24 dangerous drugs to wholesalers and pharmacies within and outside California. During that time  
25 period, on 252 different occasions, Respondents purchased 755 dangerous drugs from at least  
26 three different pharmacies, Balboa Pharmacy, Avenel Pharmacy, and My Healthmart Pharmacy.<sup>1</sup>

27 <sup>1</sup> Balboa Pharmacy holds Pharmacy Permit Number PHY 45633, issued by the Board of  
28 Pharmacy. Avenel Pharmacy holds Non-Resident Pharmacy (NRP) Permit NRP 849, issued by  
the Board of Pharmacy. My Healthmart Pharmacy holds Pharmacy Permit Number PHY 48654,  
issued by the Board of Pharmacy.

1 Respondent Dubin was not the wholesaler that had supplied the dangerous drugs to any of these  
2 pharmacies. With respect to Avenel Pharmacy, Respondents purchased 108 dangerous drugs on  
3 56 different dates.

4 20. During and/or prior to that time period, Respondents solicited pharmacies to supply  
5 Respondents with dangerous drugs that Respondents would identify to the pharmacies as the  
6 desired drugs. At the direction and/or pursuant to the encouragement of Respondents, the  
7 pharmacies would acquire the dangerous drugs listed by Respondents, typically from the  
8 pharmacies' primary wholesaler(s).<sup>2</sup> The pharmacies acted as purchasing agents for  
9 Respondents, buying drugs for Respondents, not their own patients. None of the pharmacies that  
10 Respondents purchased drugs from were licensed by the Board as wholesalers. The drugs  
11 acquired by the pharmacies were sold to Respondent Dubin.

12 21. Respondents re-sold the drugs that were acquired from pharmacies, to wholesalers  
13 and pharmacies within and outside California, often at a markup. A sampling of purchase and re-  
14 sale transactions revealed markups of up to 550 percent. For example, on April 15, 2011,  
15 Respondents purchased Magnesium Sulfate from Balboa Pharmacy for \$30.00 per unit for a total  
16 cost of \$1,800; but then resold it to Madigan Army Medical Center on April 18, 2011 at \$195.00  
17 per unit for a total price of \$11,700, which is a 550 percent mark-up.

18 22. The pharmacies utilized by Respondents were community pharmacies, yet all or  
19 nearly all of the drugs that were purchased by these pharmacies and re-sold to Respondents were  
20 drugs primarily used in hospital, medical centers, or other urgent-care environments.

### 21 **FIRST CAUSE FOR DISCIPLINE**

#### 22 **(Aiding or Abetting Unlicensed Wholesalers)**

23 23. Respondents are subject to disciplinary action under Code section 4301(o), for  
24 violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of,

25 \_\_\_\_\_  
26 <sup>2</sup> For the purposes of this Accusation, "primary wholesaler" refers to the wholesaler from  
27 which the pharmacy purchased the bulk of its dangerous drugs, and/or with which the pharmacy  
28 enjoyed a contractual relationship giving the pharmacy an "account" with the wholesaler. Most if  
not all pharmacies establish a "primary wholesaler" account relationship with a single wholesaler.  
The pharmacy is issued an account number to use in ordering from the primary wholesaler.

1 or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged,  
2 assisted in, abetted, or conspired toward, transactions violating sections 4160 and 4163 of the  
3 Code, in that pharmacies that purchased dangerous drugs on behalf of Respondents, and/or sold  
4 dangerous drugs to Respondents for re-sale, by doing so acted as unlicensed wholesalers, as set  
5 forth in paragraphs 18 through 22, which are incorporated herein by reference.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Purchasing Dangerous Drugs Under Unauthorized Conditions)**

8 24. Respondents are subject to disciplinary action under Code section 4301(o), for  
9 violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of,  
10 or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged,  
11 assisted in, abetted, or conspired toward, transactions violating section 4126.5 of the Code, by  
12 purchasing dangerous drugs from pharmacies under unauthorized conditions, as set forth in  
13 paragraphs 18 through 22, which are incorporated herein by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 25. Respondents are subject to disciplinary action under Code section 4301, in that the  
17 acts described in paragraphs 18 through 22 constitute unprofessional conduct.

18 **PRAYER**

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

21 1. Revoking or suspending Wholesaler Permit Number WLS 4212 issued to Dubin  
22 Medical, Inc., doing business as Dubin Medical, Inc.;

23 2. Revoking or suspending Designated Representative License Number EXC 18131  
24 issued to Raul J. Barajas;

25 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3;

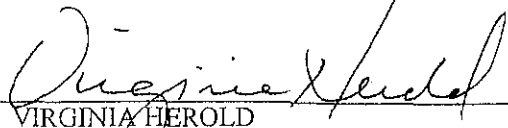
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4. Taking such other and further action as deemed necessary and proper.

DATED:

9/20/15



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

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7 Facsimile: (619) 645-2061  
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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 Accusation Against:

Case No. 4577

12 **DUBIN MEDICAL, INC.**  
13 **4655 Cass Street, #104**  
14 **San Diego, CA 92109**

**FIRST AMENDED ACCUSATION**

15 **Wholesale Permit No. WLS 6797**

16 **and**

17 **RAUL J. BARAJAS**  
18 **970 Turquoise Street**  
**San Diego, CA 92109**

19 **Designative Representative License No.**  
**EXC 18131**

20 Respondents.

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 November 13, 2002, the Board of Pharmacy issued Wholesale Permit  
27 Number WLS 4212 to Dubin Medical, Inc., doing business as Dubin Medical, Inc. (Respondent  
28 Dubin). On or about September 11, 2015, Respondent Dubin moved addresses to 4655 Cass

1 Street, #104, San Diego, CA 92109, and subsequently cancelled Wholesale Permit Number WLS  
2 4212. On or about September 11, 2015, the Board issued Wholesale Permit Number 6797 to  
3 Respondent Dubin at their new location. The Wholesale Permit will expire on September 1,  
4 2016, unless renewed.

5 3. On or about June 1, 2005, the Board of Pharmacy issued Designative Representative  
6 License Number EXC 18131 to Raul J. Barajas (Respondents Barajas). The Designative  
7 Representative License was in full force and effect at all times relevant to the charges brought  
8 herein and will expire on June 1, 2016, unless renewed.

### 9 JURISDICTION

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

13 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
14 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
15 Act [Health & Safety Code, § 11000 et seq.].

16 6. Section 4300(a) of the Code provides that every license issued by the Board may be  
17 suspended or revoked.

18 7. Section 4300.1 of the Code states:

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

### 23 STATUTORY PROVISIONS

24 8. Section 4022 of the Code states:

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

26 (a) Any drug that bears the legend: "Caution: federal law prohibits  
27 dispensing without prescription," "Rx only," or words of similar import.  
28

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

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

5 9. Section 4022.5 of the Code states:

6 (a) "Designated representative" means an individual to whom a license has  
7 been granted pursuant to Section 4053. A pharmacist fulfilling the duties of  
8 Section 4053 shall not be required to obtain a license as a designated  
9 representative.

10 (b) "Designated representative-in-charge" means a designated representative  
11 or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer  
12 and approved by the board as the supervisor or manager responsible for ensuring  
13 the wholesaler's or veterinary food-animal drug retailer's compliance with all state  
14 and federal laws and regulations pertaining to practice in the applicable license  
15 category.

16 10. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include  
17 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,  
18 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes  
19 possession of, any drug or device included in Section 4022."

20 11. Section 4053 of the Code states in part:

21 (a) Notwithstanding Section 4051, the board may issue a license as a  
22 designated representative to provide sufficient and qualified supervision in a  
23 wholesaler or veterinary food-animal drug retailer. The designated representative  
24 shall protect the public health and safety in the handling, storage, and shipment of  
25 dangerous drugs and dangerous devices in the wholesaler or veterinary food-  
26 animal drug retailer.

27 12. Section 4059.5, subdivision (a) of the Code states:

28 Except as otherwise provided in this chapter, dangerous drugs or dangerous  
devices may only be ordered by an entity licensed by the board and shall be  
delivered to the licensed premises and signed for and received by a pharmacist.  
Where a licensee is permitted to operate through a designated representative, the  
designated representative shall sign for and receive the delivery.

1 13. Section 4126.5 of the Code states:

2 (a) A pharmacy may furnish dangerous drugs only to the following:

3 (1) A wholesaler owned or under common control by the wholesaler from  
whom the dangerous drug was acquired.

4 (2) The pharmaceutical manufacturer from whom the dangerous drug was  
acquired.

5 (3) A licensed wholesaler acting as a reverse distributor.

6 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a  
7 dangerous drug that could result in the denial of health care. A pharmacy  
8 furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity  
sufficient to alleviate the temporary shortage.

9 (5) A patient or to another pharmacy pursuant to a prescription or as  
otherwise authorized by law.

10 (6) A health care provider that is not a pharmacy but that is authorized to  
11 purchase dangerous drugs.

12 (7) To another pharmacy under common control.

13 (b) Notwithstanding any other provision of law, a violation of this section  
14 may subject the person or persons who committed the violation to a fine not to  
exceed the amount specified in Section 125.9 for each occurrence pursuant to a  
citation issued by the board.

15 (c) Amounts due from any person under this section on or after January 1,  
16 2005, shall be offset as provided under Section 12419.5 of the Government Code.  
17 Amounts received by the board under this section shall be deposited into the  
Pharmacy Board Contingent Fund.

18 (d) For purposes of this section, "common control" means the power to  
19 direct or cause the direction of the management and policies of another person  
whether by ownership, by voting rights, by contract, or by other means.

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

24 15. Section 4163 of the Code states:

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

27 (b) Dangerous drugs or dangerous devices shall be acquired from a person  
28 authorized by law to possess or furnish dangerous drugs or dangerous devices. If  
the person acquiring the dangerous drugs or dangerous devices is a wholesaler, the

1 obligation of the wholesaler shall be limited to obtaining confirmation of licensure  
2 of those sources from whom it has not previously acquired dangerous drugs or  
3 dangerous devices.

4 16. Section 4301 of the Code states in pertinent part:

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

9 .....

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

15 .....

#### 16 **COST RECOVERY**

17 17. 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, with failure of the licentiate to comply subjecting the license to not being  
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
22 included in a stipulated settlement.

#### 23 **FACTUAL ALLEGATIONS**

24 18. Since August 20, 2007, Respondent Barajas has been the Designated Representative  
25 In Charge (DRIC) of Respondent Dubin.

26 19. For a period of time that included but was not necessarily limited to dates on and/or  
27 between September 4, 2009 and June 27, 2012, Respondents were engaged in a business practice  
28 that involved the purchase of dangerous drugs from pharmacies and the re-sale of those  
dangerous drugs to wholesalers and pharmacies within and outside California. During that time  
period, on 252 different occasions, Respondents purchased 755 dangerous drugs from at least

1 three different pharmacies, Balboa Pharmacy, Avenel Pharmacy, and My Healthmart Pharmacy.<sup>1</sup>  
2 Respondent Dubin was not the wholesaler that had supplied the dangerous drugs to any of these  
3 pharmacies. With respect to Avenel Pharmacy, Respondents purchased 108 dangerous drugs on  
4 56 different dates.

5 20. During and/or prior to that time period, Respondents solicited pharmacies to supply  
6 Respondents with dangerous drugs that Respondents would identify to the pharmacies as the  
7 desired drugs. At the direction and/or pursuant to the encouragement of Respondents, the  
8 pharmacies would acquire the dangerous drugs listed by Respondents, typically from the  
9 pharmacies' primary wholesaler(s).<sup>2</sup> The pharmacies acted as purchasing agents for  
10 Respondents, buying drugs for Respondents, not their own patients. None of the pharmacies that  
11 Respondents purchased drugs from were licensed by the Board as wholesalers. The drugs  
12 acquired by the pharmacies were sold to Respondent Dubin.

13 21. Respondents re-sold the drugs that were acquired from pharmacies, to wholesalers  
14 and pharmacies within and outside California, often at a markup. A sampling of purchase and re-  
15 sale transactions revealed markups of up to 550 percent. For example, on April 15, 2011,  
16 Respondents purchased Magnesium Sulfate from Balboa Pharmacy for \$30.00 per unit for a total  
17 cost of \$1,800; but then resold it to Madigan Army Medical Center on April 18, 2011 at \$195.00  
18 per unit for a total price of \$11,700, which is a 550 percent mark-up.

19 22. The pharmacies utilized by Respondents were community pharmacies, yet all or  
20 nearly all of the drugs that were purchased by these pharmacies and re-sold to Respondents were  
21 drugs primarily used in hospital, medical centers, or other urgent-care environments.  
22  
23

24 <sup>1</sup> Balboa Pharmacy holds Pharmacy Permit Number PHY 45633, issued by the Board of  
25 Pharmacy. Avenel Pharmacy holds Non-Resident Pharmacy (NRP) Permit NRP 849, issued by  
26 the Board of Pharmacy. My Healthmart Pharmacy holds Pharmacy Permit Number PHY 48654,  
27 issued by the Board of Pharmacy.

28 <sup>2</sup> For the purposes of this Accusation, "primary wholesaler" refers to the wholesaler from  
which the pharmacy purchased the bulk of its dangerous drugs, and/or with which the pharmacy  
enjoyed a contractual relationship giving the pharmacy an "account" with the wholesaler. Most if  
not all pharmacies establish a "primary wholesaler" account relationship with a single wholesaler.  
The pharmacy is issued an account number to use in ordering from the primary wholesaler.



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3. Ordering Respondents 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: 12/14/15 

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

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