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

11 In the Matter of the Accusation Against:

Case No. 4623

12
13 **ADVANCED PHARMACY HOMECARE, INC.,**
DBA ADVANCED PHARMACY HOMECARE
14 **2127 C E Valley Parkway**
Escondido, CA 92027

ACCUSATION

15 **Pharmacy Permit No. PHY 43316**

16 **and**

17
18 **ANGELA RYAN FORCUCCI**
1122 Via Vera Cruz,
19 **San Marcos, CA 92078**

20 **Pharmacist License No. RPH 49860**

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 27 2. On or about December 19, 1997, the Board of Pharmacy issued Pharmacy Permit
28 Number PHY 43316 to Advanced Pharmacy Homecare, Inc., to do business as Advanced

1 Pharmacy Homecare (Respondent Advanced). The Pharmacy Permit was in full force and effect
2 at all times relevant to the charges brought herein and will expire on December 1, 2014, unless
3 renewed.

4 3. On or about September 15, 1997, the Board of Pharmacy issued Pharmacist License
5 Number RPH 49860 to Angela Ryan Forcucci (Respondent Forcucci). The Pharmacist License
6 was in full force and effect at all times relevant to the charges brought herein and will expire on
7 August 31, 2015, unless renewed.

8 JURISDICTION

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

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

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

17 7. Section 4300.1 of the Code states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued license
19 by operation of law or by order or decision of the board or a court of law, the
20 placement of a license on a retired status, or the voluntary surrender of a license by a
21 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.

22 STATUTORY PROVISIONS

23 8. Section 4022 of the Code states:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar import,

1 the blank to be filled in with the designation of the practitioner licensed to use or
2 order use of the device.

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

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

9 10. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be
10 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
11 to the practice of pharmacy."

12 11. Section 4126.5 of the Code states:

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

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

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

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

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

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

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

27 (7) To another pharmacy under common control.

28 (b) Notwithstanding any other provision of law, a violation of this section
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.

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

1 (d) For purposes of this section, "common control" means the power to
2 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.

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

7 13. Section 4301 of the Code states in pertinent part:

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

11

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

16

16 REGULATORY PROVISIONS

17 14. California Code of Regulations, title 16, section 1709.1(a) states that "[t]he
18 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
19 responsibility for the daily operation of the pharmacy."

20 15. California Code of Regulations, title 16, section 1783, subdivision (d) provides, in
21 pertinent part, that a manufacturer or wholesaler shall not accept payment for, or allow the use of
22 an entity's credit to establish an account for, the purchase of dangerous drugs or devices from any
23 person other than the owner(s) or executive officer(s) listed on the permit, on a permit's account.

24 COST RECOVERY

25 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FACTUAL ALLEGATIONS**

4 17. From December 30, 2007 through March 28, 2011, Respondent Angela Forcucci was
5 the Pharmacist-in-Charge (PIC) of Advanced Pharmacy Homecare, Inc., dba Advanced Pharmacy
6 Homecare (Respondent Advanced).

7 18. From November 2, 2009 to February 25, 2011, Respondent Advanced sold or
8 furnished 1,856 dangerous drugs to McGowen Enterprises¹ on 701 different occasions for total
9 sales in the amount of \$712,316.84. Respondent Advanced was selling drugs to McGowan
10 Enterprises when Respondent Forcucci took over as the PIC in 2007. Respondent Advanced
11 continued to sell drugs to McGowan Enterprises after Respondent Forcucci became the PIC.
12 Respondent Forcucci did not have personal involvement in the ordering, billing, or selling of the
13 drug products to McGowen Enterprises.

14 19. Employees at McGowen Enterprises were given access to Respondent Advanced's
15 AmerisourceBergen on-line account, which allowed McGowen Enterprises to submit drug orders
16 directly to the primary wholesaler, AmerisourceBergen, using Respondent Advanced's account
17 information. When McGowan Enterprises ordered drugs under Advanced's account from
18 AmerisourceBergen, a purchase order number that included the purchaser's initials were used.
19 The Board inspector confirmed this practice with McGowen Enterprises' purchasing agent.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Functioning as Unlicensed Wholesalers)**

22 20. Respondents are subject to disciplinary action under Code section 4301(o), for
23 violating section 4160 of the Code, in that Respondents "sold" or furnished dangerous drugs to
24 McGowan Enterprises and by so doing acted as an unlicensed wholesaler, as set forth in
25 paragraphs 17 through 19, which are incorporated herein by reference.

26 ¹ On or about September 2, 1997, the Board of Pharmacy issued Wholesaler Permit
27 Number WLS 3336 to McGowan Enterprises Inc., doing business as C.A.T. Kits. On or about
28 September 27, 2012, McGowan Enterprises Inc. changed its name to do business as McGowan
Enterprises, Inc./Acute Care Pharmaceuticals.

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SECOND CAUSE FOR DISCIPLINE

(Selling Dangerous Drugs Under Unauthorized Conditions)

21. Respondents are subject to disciplinary action under Code section 4301(o), for violating the pharmacy law, by selling or furnishing dangerous drugs to McGowen Enterprises under unauthorized conditions, in violation of Code section 4126.5, as set forth in paragraphs 17 through 19, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unauthorized Use of its Account for Purchase of Drugs)

22. 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 and regulations governing pharmacy, when Respondents assisted in, abetted, or conspired toward, transactions violating California Code of Regulations, title 16, section 1783(d), by allowing McGowan Enterprises to purchase dangerous drugs from Respondents' primary wholesalers on Respondent's accounts, as set forth in paragraphs 17 through 19, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

23. Respondents are subject to disciplinary action under Code section 4301, for general unprofessional conduct when they allowed McGowen Enterprises to purchase dangerous drugs from its primary wholesalers account, as set forth in paragraphs 17 through 19, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Against Respondent Forcucci: Failure to Supervise)

24. Respondent Forcucci is subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, section 1709.1(a) when she failed to supervise or be responsible for Respondent Advanced's sale or furnishing of dangerous drugs to McGowan Enterprises, as set forth in paragraphs 17 through 19, which are incorporated herein by reference.

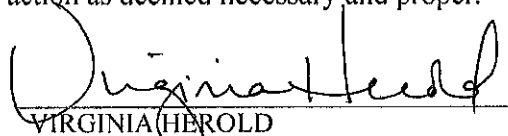
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PRAYER

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 Pharmacy Permit Number PHY 43316, issued to Advanced Pharmacy Homecare, Inc., to do business as Advanced Pharmacy Homecare (Respondent);
2. Revoking or suspending Pharmacist License Number RPH 49860, issued to Angela Ryan Forcucci (Respondent);
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: 2/14/14



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

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