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

In the Matter of the Accusation Against: **EXCELLERX INC.** **512 Elmwood Avenue** **Sharon Hill, PA 19079** **Non-Resident Pharmacy Permit No. NRP 714** **EXCELLERX INC.** **2525 Horizon Lake Drive, Suite 101** **Memphis TN 38133** **Non-Resident Pharmacy Permit No. NRP 715** Respondents.	Case No. 4940 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about October 1, 2007, the Board of Pharmacy issued Non-Resident Pharmacy Permit Number NRP 714 to ExcelleRx Inc to do business at 512 Elmwood Avenue, Sharon Hill,

PA, 19079 (Respondent). The Non-Resident Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2014, unless renewed.

3. On or about April 13, 2007, the Board of Pharmacy issued Non-Resident Pharmacy Permit Number NRP 715 to Omnicare Inc. and ExcelleRx Inc. to do business as ExcelleRX Inc. at 2525 Horizon Lake Drive, Suite 101, Memphis TN 38133 (Respondent). The Non-Resident Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on April 1, 2015, unless renewed.

JURISDICTION

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

5. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. Section 118 of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

7. On or about October 2, 2007, the Respondents' parent company, ExcelleRX, Inc., entered into a consent decree with the Drug Enforcement Administration (DEA). This consent decree was related to Respondents dispensing approximately 7,000 schedule II controlled substances to hospice patients without meeting the emergency authorization procedure established under 21 CFR section 290.10. Under the consent decree, Respondents neither admitted nor denied liability. Respondents agreed to pay a civil penalty in the amount of $540,000.

CAUSE FOR DISCIPLINE

(Out of State Discipline)

8. Respondents are subject to discipline under Code section 4301 (n) in that effective September 13, 2011, pursuant to a Consent Order, attached hereto as **Exhibit A**, in a matter titled *In the Matter of Excellerx,* the Tennesee State Board of Pharmacy placed Respondents Pharmacy license on probation for a period of five years under terms and conditions of probation including compliance with inspections among other conditions.

9. Respondents are subject to discipline under Code section 4301 (n) in that effective November 5, 2012, pursuant to a Consent Agreement, attached hereto as **Exhibit B**, in a matter titled *In re Excellerx,* the State of Maine, found that ExcelleRX failed to disclose disciplinary action by the FDA on their request for renewal of licensure and imposed a warning and a civil penalty in the amount of $2000.

10. Respondents are subject to discipline under Code section 4301 (n) in that effective December 13, 2013, pursuant to a Decision and Order, attached hereto as **Exhibit C**, in a matter entitled *In the Matter of the Indiana Non-Resident Pharmacy Licenses of Excelle RX PA d/b/a Hospice Pharmacia License Number 64000693A, Excellerx license number 64000385A, and Ecellerx license number 64000985A,* before the Indiana Board of Pharmacy; the Indiana Board issued a letter of reprimand and fined Respondents two hundred and fifty dollars ($250) for failure to disclose the consent decree entered into with the FDA on their application for renewal.

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 Non-Resident Pharmacy Permit Number NRP 714, issued to ExcelleRx Inc. do business at 512 Elmwood Avenue, Sharon Hill, PA 19079;

2. Revoking or suspending Non-Resident Pharmacy Permit Number NRP 715, issued to ExcelleRx Inc. do business at 2525 Horizon Lake Drive, Suite 101, Memphis TN 38133;

3. Ordering ExcelleRX 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: 5/3/14

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

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