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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. 5119

12 **FOSTER PHARMACEUTICALS**
13 **2603 Main Street, Suite 800**
Irvine, CA 92614

A C C U S A T I O N

14 **Wholesale Permit No. WLS 6248**

15 **GEORGE ANTHONY CARILLO**
16 **P.O. Box 2408**
Fullerton, CA 92837

17 **Designated Representative License No**
18 **EXC 22249**

19 Respondents.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about July 16, 2013, the Board of Pharmacy issued Wholesale Permit Number
26 WLS 6248 to Foster Pharmaceuticals (Respondent Foster Pharmaceuticals). The Wholesale
27 Permit was in full force and effect at all times relevant to the charges brought herein and will
28 expire on July 1, 2015, unless renewed.

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13. Section 4105, subdivisions (a) and (c) of the Code state:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

....

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

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(a) of the Code states:

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

16. Section 4169 of the Code states in pertinent part:

(a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

....

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

....

17. Section 4301 of the Code states, in pertinent part:

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

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in 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 pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

1 \$369,589 from an unknown entity or persons. Respondents' records reflect that JD
2 Pharmaceutical Wholesaler Inc. sold those drugs to Respondents. However, JD Pharmaceutical
3 Wholesaler Inc. did not sell those drugs to Respondents.

4 24. During an inspection on August 7, 2013, Respondent George Carillo informed the
5 Board inspector that Respondents purchased dangerous drugs from JD Pharmaceutical Wholesaler
6 Inc., but on August 9, 2013, Respondent George Carillo informed the Board inspector that
7 Respondents had not purchased drugs from JD Pharmaceutical Wholesaler Inc., explaining that
8 the sales invoices were actually "drug proposals." Respondents did not produce any records of
9 the purported transactions with JD Pharmaceutical Wholesaler Inc., other than two invoices, or
10 any other records reflecting the transactions between the entity or person who actually sold them
11 the dangerous drugs listed on the JD Pharmaceutical Wholesaler Inc. invoices.

12 25. From July 24, 2013 through August 1, 2013, Respondents did not maintain all the
13 records for the acquisition of dangerous drugs purchased for \$2,911,844.62 and the records of
14 disposition of those dangerous drugs, which Respondent sold for \$656,585.75.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Purchasing Drugs from Unlicensed Entities)**

17 26. Respondents are subject to disciplinary action under Code section 4301(o), for
18 violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
19 drugs, including drugs used for the treatment of HIV and AIDS from an unlicensed entity, SD
20 Trading, an entity masquerading as JD Pharmaceutical Wholesale, Inc., as set forth in paragraphs
21 21 through 25 above, which are incorporated herein by reference.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Failure to Keep Records of Acquisition and Disposition Open for Inspection
24 and to Keep Current Inventory)**

25 27. Respondents are subject to disciplinary action under Code sections 4301(o), for
26 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
27 disposition of dangerous drugs open for inspection or keep a current inventory as defined by
28 California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs

1 used for the treatment of HIV and AIDS, it sold to pharmacies from July 24, 2013 through August
2 1, 2013, as set forth in paragraphs 21 through 25, which are incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Retain Records of Dangerous Drugs on Licensed Premises)**

5 28. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating Code sections 4105 (a) and (c), in that Respondents failed to retain records for the
7 dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold
8 from July 24, 2013 through August 1, 2013, as set forth in paragraphs 21 through 25, which are
9 incorporated herein by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Subverting an Investigation)**

12 29. Respondents are subject to disciplinary action under Code section 4301(q), for
13 subverting an investigation of the Board in that they made misrepresentations to the Board
14 Inspector about their purchase of dangerous drugs, including drugs used for the treatment of HIV
15 and AIDS drugs on July 6 and August 2, 2013 and did not produce the complete records of those
16 drug transactions even though they represented that they had access to them, as set forth in
17 paragraphs 21 through 25, which are incorporated herein by reference.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 30. Respondents are subject to disciplinary action under Code section 4301 for
21 unprofessional conduct in that they engaged in the activities described in paragraphs 21 through
22 25 above, which are incorporated herein by reference.

23 **OTHER MATTERS**

24 31. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit
25 Number WLS 6248, issued to Foster Pharmaceuticals and George Anthony Carillo while acting
26 as the manager, administrator, owner, member, officer, director, associate, or partner of Foster
27 Pharmaceuticals had knowledge of or knowingly participated in any conduct for which
28 Wholesaler Permit Number WLS 6248 was revoked, suspended or placed on probation, George

1 Anthony Carillo shall be prohibited from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for five years if Wholesaler Permit Number
3 WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248 is reinstated if
4 it is revoked.

5 32. Pursuant to Code section 4307, if discipline is imposed on Designated
6 Representative License No. EXC 22249 issued to George Anthony Carillo, George Anthony
7 Carillo shall be prohibited from serving as a manager, administrator, owner, member, officer,
8 director, associate, or partner of a licensee for five years if Designated Representative License
9 Number EXC 22249 is placed on probation or until Designated Representative License Number
10 EXC 22249 is reinstated if it is revoked.

11 PRAYER

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

14 1. Revoking or suspending Wholesale Permit Number WLS 6248, issued to Foster
15 Pharmaceuticals;

16 2. Revoking or suspending Designated Representative License Number EXC 22249,
17 issued to George Anthony Carillo;

18 3. Prohibiting George Anthony Carillo from serving as a manager, administrator,
19 owner, member, officer, director, associate, or partner of a licensee for five years if Wholesaler
20 Permit Number WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248
21 is reinstated if Wholesaler Permit Number WLS 6248 issued to Foster Pharmaceuticals is
22 revoked;

23 4. Prohibiting George Anthony Carillo from serving as a manager, administrator,
24 owner, member, officer, director, associate, or partner of a licensee for five years if Designated
25 Representative License Number EXC 22249 is placed on probation or until Designated
26 Representative License Number EXC 22249 is reinstated if Designated Representative License
27 Number EXC 22249 issued to George Anthony Carillo is revoked;

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