1 2 3 4 5 6 7 8		RE THE	
1	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11 12	In the Matter of the Accusation Against:	Case No. 5119	
percent of the second of the s	FOSTER PHARMACEUTICALS		
13	2603 Main Street, Suite 800 Irvine, CA 92614	ACCUSATION	
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15	Wholesale Permit No. WLS 6248		
8	GEORGE ANTHONY CARILLO		
16	P.O. Box 2408 Fullerton, CA 92837		
17	Designated Representative License No	u u	
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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3. On or about April 24, 2013, the Board of Pharmacy issued Designated Representative License Number EXC 22249 to George Anthony Carillo (Respondent George Carillo.) The Designated Representative License 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 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, §11000 et seq.].
- Section 4300(a) of the Code states that every license issued may be suspended or revoked.
  - 7. Section 4300.1 of the Code states:

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

Section 4307(a) of the Code states that:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

- (1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.
- (2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

9. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for 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.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or 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.
- 10. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022."

# 11. Section 4053(a) of the Code states:

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

# 12. Section 4081 of the Code states:

- (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.
- (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

18. California Code of Regulations, title 16, section 1718 states in pertinent part that "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

# COST RECOVERY

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

### DRUGS

20. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complera, epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022 and possess a high resale and street dollar value.

# **FACTUAL ALLEGATIONS**

- 21. Since July 16, 2013 and at all times mentioned herein, Respondent George Carillo was the Designated Representative-in-Charge (DRIC) of Respondent Foster Pharmaceuticals.
- 22. At all times mentioned herein, ST Trading was an entity that was not licensed by the Board, had no premises or telephone numbers and was non-existent. On July 16, 2013, Respondents purchased dangerous drugs, including drugs used for the treatment of HIV and AIDS drugs at a total cost of \$1,146,917.52 from ST Trading.
- 23. On July 16, 2013, Respondents purchased HIV and AIDS drugs in the amount of \$1,735,213.10. On August 2, 2013, Respondents purchased dangerous drugs including drugs used for the treatment of HIV and AIDS as described in paragraph 20, above, in the amount of

\$369,589 from an unknown entity or persons. Respondents' records reflect that JD.

Pharmaceutical Wholesaler Inc. sold those drugs to Respondents. However, JD Pharmaceutical Wholesaler Inc. did not sell those drugs to Respondents.

- 24. During an inspection on August 7, 2013, Respondent George Carillo informed the Board inspector that Respondents purchased dangerous drugs from JD Pharmaceutical Wholesaler Inc., but on August 9, 2013, Respondent George Carillo informed the Board inspector that Respondents had not purchased drugs from JD Pharmaceutical Wholesaler Inc., explaining that the sales invoices were actually "drug proposals." Respondents did not produce any records of the purported transactions with JD Pharmaceutical Wholesaler Inc., other than two invoices, or any other records reflecting the transactions between the entity or person who actually sold them the dangerous drugs listed on the JD Pharmaceutical Wholesaler Inc. invoices.
- 25. From July 24, 2013 through August 1, 2013, Respondents did not maintain all the records for the acquisition of dangerous drugs purchased for \$2,911,844.62 and the records of disposition of those dangerous drugs, which Respondent sold for \$656,585.75.

# FIRST CAUSE FOR DISCIPLINE

# (Purchasing Drugs from Unlicensed Entities)

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

# SECOND CAUSE FOR DISCIPLINE

# (Failure to Keep Records of Acquisition and Disposition Open for Inspection and to Keep Current Inventory)

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

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

# THIRD CAUSE FOR DISCIPLINE

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

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

# FOURTH CAUSE FOR DISCIPLINE

# (Subverting an Investigation)

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

# FIFTH CAUSE FOR DISCIPLINE

# (Unprofessional Conduct)

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

### OTHER MATTERS

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

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

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

# 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 Wholesale Permit Number WLS 6248, issued to Foster Pharmaceuticals;
- 2. Revoking or suspending Designated Representative License Number EXC 22249, issued to George Anthony Carillo;
- 3. Prohibiting George Anthony Carillo from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Wholesaler Permit Number WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248 is reinstated if Wholesaler Permit Number WLS 6248 issued to Foster Pharmaceuticals is revoked;
- 4. Prohibiting George Anthony Carillo from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Designated Representative License Number EXC 22249 is placed on probation or until Designated Representative License Number EXC 22249 is reinstated if Designated Representative License Number EXC 22249 issued to George Anthony Carillo is revoked;

1	5. Ordering Foster Pharmaceuticals and George Anthony Carillo to pay the Board of	
2	Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to	
3	Business and Professions Code section 125.3;	
4	6. Taking such other and further action as deemed necessary and proper.	
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6	9/5/14 1)- 5 2/1	
7	DATED: VIRGINIA HENOLD	
8	Executive Officer Board of Pharmacy	
9	Department of Consumer Affairs State of California	
10	Complainant	
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Accusation