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

11 In the Matter of the Statement of Issues
12 Against:
13 **ACARIAHEALTH PHARMACY INC.**
14 Non Resident Pharmacy Sterile Compounding
15 License Applicant
16 Respondent.

Case No. 5820

STATEMENT OF ISSUES

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

- 19 1. Complainant brings this Statement of Issues solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
- 21 2. On or about December 27, 2013, the Board issued Non-Resident Pharmacy Permit
22 Number NRP 1401 to AcariaHealth Pharmacy Inc. ("Respondent"), with Donald Howard, its
23 President/Director, Jeffrey S. Fisher, Chief Operating Officer, Carmen Iris Fontanez, Executive
24 Vice President, and Jason Masterson Harrold, Director, Vice President and Secretary. The
25 registration is in full force and effect until December 1, 2016.
- 26 3. On or about October 13, 2015, the Board received an application for a Nonresident
27 Pharmacy Sterile Compounding License from Respondent, with Donald Howard, its
28 President/Director, Jeffrey Fisher, EVP Strategic Business Development, Stephen Jensen, Chief

1 Financial Officer, Carmen Fontanez, Executive Vice President, Sales and Marketing, and
2 Jason M. Harrold, Vice President and Secretary. On or about October 9, 2015, Stephen Jensen
3 certified under penalty of perjury to the truthfulness of all statements, answers, and
4 representations in the application. The Board denied the application on March 18, 2016.

5 **JURISDICTION/STATUTORY PROVISIONS**

6 4. This Statement of Issues is brought before the Board, Department of Consumer
7 Affairs, under the authority of the following laws. All section references are to the Business and
8 Professions Code unless otherwise indicated.

9 5. Code section 480 states, in pertinent part:

10 (a) A board may deny a license regulated by this code on the grounds that the
11 applicant has one of the following:

12 (3) (A) Done any act that if done by a licentiate of the business or profession in
question, would be grounds for suspension or revocation of license.

13 6. Code section 4300(c) states, in pertinent part, that, "The board may refuse a license to
14 any applicant guilty of unprofessional conduct."

15 7. Code section 4301 states, in pertinent part:

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

19 (n) The revocation, suspension, or other discipline by another state of a license
20 to practice pharmacy, operate a pharmacy, or do any other act for which a license is
required by this chapter.

21 8. Code section 4300.1 states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued license
23 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
24 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
25 a decision suspending or revoking the license.

26 9. Code section 4302 states:

27 The board may deny, suspend, or revoke any license of a corporation where
28 conditions exist in relation to any person holding 10 percent or more of the corporate
stock of the corporation, or where conditions exist in relation to any officer or

1 director of the corporation that would constitute grounds for disciplinary action
2 against a licensee.

3 10. Code section 4303(b) states:

4 The board may deny, revoke, or suspend a nonresident pharmacy registration,
5 issue a citation or letter of admonishment to a nonresident pharmacy, or take any
6 other action against a nonresident pharmacy that the board may take against a resident
7 pharmacy license, on any of the same grounds upon which such action might be taken
8 against a resident pharmacy, provided that the grounds for the action are also grounds
9 for action in the state in which the nonresident pharmacy is permanently located.

8 **CAUSE FOR DENIAL OF APPLICATION**

9 **(Out of State Discipline)**

10 11. Respondent's application is subject to denial for unprofessional conduct under section
11 480(a)(3)(A), and section 4300, as defined by section 4301(n), in that Respondent has been
12 disciplined by the Virginia Board of Pharmacy ("Virginia Board"), as follows:

13 a. On or about November 7, 2014, the Virginia Board entered an *Inspection Deficiency*
14 *Notice and Consent Order* against AcariaHealth Pharmacy, Permit Number 0201004179, wherein
15 Respondent was assessed a monetary penalty of \$250 for its failure to remodel pursuant to an
16 application to and approval of the Virginia Board.

17 b. On or about February 11, 2015, in the matter entitled, *In Re: Acariahealth Pharmacy,*
18 *Inc. Permit No.: 0201-004179*, the Virginia Board entered a *Consent Order* pursuant to its
19 allegations of compounding violations. The basis of the discipline was the Virginia Board's
20 allegations, that include, but are not limited to, assigning "beyond use" dates for compounded
21 sterile products (CSPs) that were longer than allowed by the United States Pharmacopeia National
22 Formulary; failure to maintain compounding records; and, compounding medications that were
23 not FDA approved, as well as commercially available products. Respondent acknowledged that
24 the deficiencies had been corrected. Respondent was assessed a monetary penalty of \$8,350.

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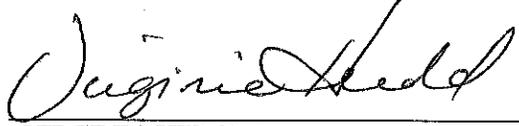
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PRAYER

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. Denying the application of AcariaHealth Pharmacy Inc. for a Nonresident Pharmacy Sterile Compounding License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/16



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

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