

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

In the Matter of the Accusation Against:

Case No. 3166

APGUARD MEDICAL, INC.
6404 Independence Ave.
Woodland Hills, CA 91367

Pharmacy Permit No. PHY 43386

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 23, 2010.

It is so ORDERED on May 24, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Benneth H. Schell

KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS
Deputy Attorney General
4 State Bar No. 238437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3166

13 **APGUARD MEDICAL, INC.**
6404 Independence Avenue
Woodland Hills, CA 91367

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Pharmacy Permit No. PHY 43386**

15 Respondent.

16
17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Scott J. Harris, Deputy Attorney
24 General.

25 2. Apguard Medical, Inc. (Respondent) is represented in this proceeding by attorney
26 John A. Cronin, Esq., whose address is Fredrickson, Mazeika & Grant, 5720 Oberlin Drive,
27 San Diego, California 92121-1723.

28 ///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3166, agrees that cause exists for discipline and hereby surrenders their Pharmacy Permit No.
4 PHY 43386 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation it enables the Board to issue
6 an order accepting the surrender of their Pharmacy Permit without further process.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
9 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
10 communicate directly with the Board regarding this stipulation and surrender, without notice to or
11 participation by Respondent or its counsel. By signing the stipulation, Respondent understands
12 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
13 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
14 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or
15 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
16 and the Board shall not be disqualified from further action by having considered this matter.

17 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
18 License and Order, including facsimile signatures thereto, shall have the same force and effect as
19 the originals.

20 12. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

22 ORDER

23 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 43386, issued to Respondent
24 Apguard Medical, Inc. is surrendered and that the surrender is accepted by the Board of
25 Pharmacy.

26 13. The surrender of Respondent's Pharmacy Permit and the acceptance of the
27 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
28

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board.

3 14. Respondent shall lose all rights and privileges as a pharmacy in California as of the
4 effective date of the Board's Decision and Order.

5 15. Respondent shall cause to be delivered to the Board its wall license certificate on or
6 before the effective date of the Decision and Order.

7 16. Respondent Apguard Medical, Inc. and the owners of Apguard Medical, Inc., *i.e.*,
8 Falih Audish, Terry Berlin, George DeMattos, and Rick Wilson (Owners), shall be ineligible to
9 submit a new application for a new pharmacy permit for five years from the effective date of this
10 order and the Board shall retain the ability to deny any future pharmacy permits after the five
11 years waiting period.

12 17. If Respondent and Owners ever apply for licensure or petitions for reinstatement in
13 the State of California, the Board shall treat it as a new application for licensure. Respondent and
14 Owners must comply with all the laws, regulations and procedures for licensure in effect at the
15 time the application or petition is filed, and all of the charges and allegations contained in
16 Accusation No. 3166 shall be deemed to be true, correct and admitted by Respondent and Owners
17 when the Board determines whether to grant or deny the application or petition.

18 18. Should Respondent ever apply or reapply for a new license or certification, or petition
19 for reinstatement of a license, by any other health care licensing agency in the State of California,
20 all of the charges and allegations contained in Accusation, No. 3166 shall be deemed to be true,
21 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
22 proceeding seeking to deny or restrict licensure.

23 19. Respondent and Owners, jointly and severally, shall pay the Board its costs of
24 investigation and enforcement in the amount of \$7,000.00 prior to issuance of any new or
25 reinstated license issued by the Board of Pharmacy.

26 ///

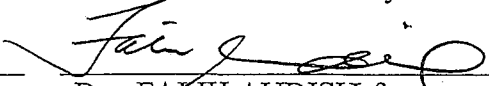
27 ///

28 ///

ACCEPTANCE

We have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with our attorney, John A. Cronin, Esq.. We understand the stipulation and the effect it will have on our Pharmacy Permit and any future applications for pharmacy permits. We enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3/8/2010

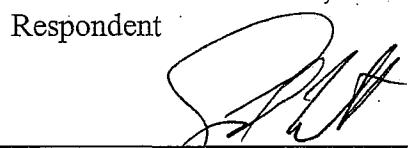


By: FALIH AUDISH for
APGUARD MEDICAL, INC.
Respondent

DATED: _____

By: TERRY BERLIN for
APGUARD MEDICAL, INC.
Respondent

DATED: 3/8/2010



By: GEORGE De MATTOS for
APGUARD MEDICAL, INC.
Respondent

DATED: _____

By: RICK WILSON for
APGUARD MEDICAL, INC.
Respondent

I have read and fully discussed with Respondent Apguard Medical, Inc. and its Owners the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 3/8/2010



JOHN A. CRONIN, ESQ.
Attorney for Respondent

///

///

ACCEPTANCE

We have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with our attorney, John A. Cronin, Esq.. We understand the stipulation and the effect it will have on our Pharmacy Permit and any future applications for pharmacy permits. We enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3/8/2010



By: FALIH AUDISH for
APGUARD MEDICAL, INC.
Respondent

DATED: 3/8/2010



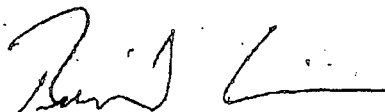
By: TERRY BERLIN for
APGUARD MEDICAL, INC.
Respondent

DATED: 3/8/2010



By: GEORGE De MATTOS for
APGUARD MEDICAL, INC.
Respondent

DATED: 3/8/2010



By: RICK WILSON for
APGUARD MEDICAL, INC.
Respondent

I have read and fully discussed with Respondent Apguard Medical, Inc. and its Owners the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 3/8/2010



JOHN A. CRONIN, ESQ.
Attorney for Respondent

///

///

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: March 8, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General



SCOTT J. HARRIS
Deputy Attorney General
Attorneys for Complainant

LA2008600754
50486308.doc

Exhibit A

Accusation No. 3166

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 JENNIFER S. CADY, State Bar No. 100437
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2442
Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3166

11 APGUARD MEDICAL, INC.
12 6404 Independence Avenue
Woodland Hills, CA 91367

A C C U S A T I O N

13 Pharmacy Permit No. PHY 43386,

14
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 12, 1998, the Board of Pharmacy issued Pharmacy
23 Permit Number PHY 43386 to Apguard Medical, Inc. (Respondent Apguard Medical). The
24 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
25 and will expire on August 1, 2009, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4300 of the Code provides, in pertinent part, that every license
3 issued by the Board is subject to discipline, including suspension or revocation.

4 5. Section 118, subdivision (b) states:

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

12 6. Section 4113, subdivision (b) of the Code states:

13 “The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with
14 all state and federal laws and regulations pertaining to the practice of pharmacy.”

15 7. Section 4301 of the Code states:

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
18 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
19 following:

20

21 (j) The violation of any of the statutes of this state or of the United States
22 regulating controlled substances and dangerous drugs.

23

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
25 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
26 applicable federal and state laws and regulations governing pharmacy, including regulations
27 established by the board.”

28 ///

1 8. Section 4081 of the Code states, in pertinent part:

2 "(a) All records of manufacture and of sale, acquisition, or disposition of
3 dangerous drugs or dangerous devices shall be at all times during business hours open to
4 inspection by authorized officers of the law, and shall be preserved for at least three years from
5 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
6 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
7 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
8 certificate, license, permit, registration, or exemption under Division 2 (commencing with
9 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)
10 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
11 dangerous devices.

12 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
13 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
14 representative-in-charge, for maintaining the records and inventory described in this section. . .
15 ."

16 9. Section 4169, subdivision (a)(1), states:

17 "(a) A person or entity may not do any of the following:
18 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at
19 wholesale with a person or entity that is not licensed with the board as a wholesaler or
20 pharmacy."

21 10. Section 4333 of the Code states, in pertinent part:

22 "(a) All prescriptions filled by a pharmacy and all other records required by
23 Section 4081 shall be maintained on the premises and available for inspection by authorized
24 officers of the law for a period of at least three years. In cases where the pharmacy discontinues
25 business, these records shall be maintained in a board-licensed facility for at least three years."

26 11. California Code of Regulations, title 16, section 1711, states, in pertinent
27 part:

28 "(a) Each pharmacy shall establish or participate in an established quality

1 assurance program which documents and assesses medication errors to determine cause and an
2 appropriate response as part of a mission to improve the quality of pharmacy service and prevent
3 errors.

4 ...
5 (e) The primary purpose of the quality assurance review shall be to advance error
6 prevention by analyzing, individually and collectively, investigative and other pertinent data
7 collected in response to a medication error to assess the cause and any contributing factors such
8 as system or process failures. A record of the quality assurance review shall be immediately
9 retrievable in the pharmacy. . . .

10 (f) The record of the quality assurance review, as provided in subdivision (e)
11 shall be immediately retrievable in the pharmacy for at least one year from the date the record
12 was created. . . .”

13 12. California Code of Regulations, title 16, section 1718, states:

14 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
15 Professions Code shall be considered to include complete accountability for all dangerous drugs
16 handled by every licensee enumerated in Sections 4081 and 4332.

17 The controlled substances inventories required by Title 21, CFR, Section 1304
18 shall be available for inspection upon request for at least 3 years after the date of the inventory."

19 **COST RECOVERY**

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

24 **DANGEROUS DRUGS**

25 14. Xopenex, a brand name for Levalbuterol, is classified as a dangerous drug
26 pursuant to section 4022 of the Code and is used for bronchospasms in patients with reversible
27 obstructive airway disease.

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Quality Assurance Records Not Immediately Retrievable)

3 15. Respondent is subject to disciplinary action under section 4301,
4 subdivisions (j) and (o), in conjunction with California Code of Regulations, Title 16, section
5 1711, subdivisions (e) and (f), in that during an inspection of Apguard Medical on or about May
6 17, 2007, personnel and / or officers of Apguard Medical were unable to locate the quality
7 assurance records and policy and procedures for medication errors.

8 SECOND CAUSE FOR DISCIPLINE

9 (Failure to Maintain Current Inventory)

10 16. Respondent is subject to disciplinary action under section 4301,
11 subdivisions (j) and (o), in conjunction with Code section 4081, subdivisions (a) and (b) and
12 California Code of Regulations, Title 16, section 1718, in that Respondent failed to maintain a
13 current and accurate inventory of Xopenex. The circumstances are as follows:

14 a. An audit of Apguard Medical's purchase and sales records from on or
15 about May 1, 2004 to on or about May 17, 2007, revealed an overage of 10,859 unit-dosed vials
16 of Xopenex 0.63 mg/3mls and 3,556 unit-dose vials of Xopenex 1.25 mg/3mls.

17 THIRD CAUSE FOR DISCIPLINE

18 (Purchased Drugs from Unlicensed Wholesaler)

19 17. Respondent is subject to disciplinary action under section 4301,
20 subdivisions (j) and (o), in conjunction with Code section 4169, subdivision (a)(1), in that
21 Respondent purchased dangerous drugs from an unlicensed wholesaler. The circumstances are
22 as follows:

23 a. From on or about October 26, 2005 to on or about April 18, 2007,
24 Respondent purchased Xopenex 0.63 mg/3mls and 1.25 mg/3mls from Letco Medical, Inc.,
25 located in Decatur, Alabama. Letco Medical was not licensed in California as a non-resident
26 wholesaler until on or about November 1, 2007.

27 b. An audit of Apguard Medical's purchase records of Xopenex from on or
28 about May 1, 2004 to on or about May 17, 2007, revealed that Apguard Medical purchased

1 Xopenex from Clifford Victor,¹ who was not licensed as a wholesaler. Mr. Victor worked at
2 Savon Drug Store No. 9655 and diverted the Xopenex from Savon Drugs and sold the Xopenex
3 to Appguard Medical.

4 PRAYER

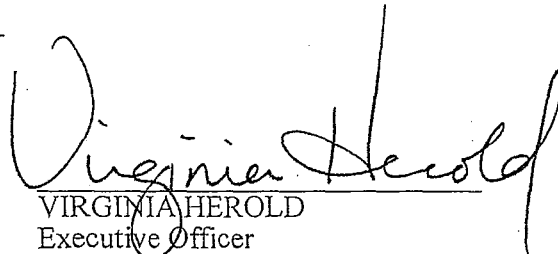
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Permit Number PHY 43386, issued to
8 Appguard Medical, Inc.;

9 2. Ordering Appguard Medical, Inc. to pay the Board of Pharmacy the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 2/2/09

15
16 

17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

23 LA2008600754

24 appguard-revacc

25
26
27
28 1. Clifford Victor was, at the time, employed as a pharamist at Savon Drug. On or about
December 6, 2007, Mr. Victor's License No. RPH 41656 was revoked.