

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

In the Matter of the Second Amended Accusation
Against:

SUPERIOR MEDICAL SUPPLY, INC.;
Mark C. Snyder, CEO
11005 Dover Street, Suite 1100
Westminster, CO 80021

Original Out of State Distributor Permit No.
OSD 4574

And

JAKE J. SNYDER
Designated Representative-in-Charge
P.O. Box 270930
Superior, CO 80027

Original Certificate Number EXC 18204

Respondents.

Case No. 3331

OAH No. L-2010031073

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
SUPERIOR MEDICAL SUPPLY, INC.
ONLY**

DECISION AND ORDER

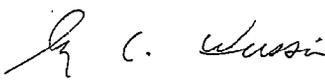
The attached Stipulated Revocation of License Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 7, 2012.

It is so ORDERED on April 5, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

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

10 In the Matter of the Second Amended
11 Accusations Against:
12 **SUPERIOR MEDICAL SUPPLY, INC.;**
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13 11005 Dover Street, Suite 100
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15 Original Out of State Distributor Permit No.
OSD 4574
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17 and
18 **JAKE J. SNYDER,**
Designated Representative-in-Charge
19 P.O. Box 270930
Superior, CO 80027
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Case No. 3331
OAH No. L-2010031073

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
SUPERIOR MEDICAL SUPPLY, INC.
ONLY**

22
23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
27 She brought this action solely in her official capacity and is represented in this matter by Kamala
28 D. Harris, Attorney General of the State of California, by Heather Hua, Deputy Attorney General.

1 Accusation; the right to be represented by counsel at its own expense; the right to confront and
2 cross-examine the witnesses against them; the right to present evidence and to testify on its own
3 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
4 production of documents; the right to reconsideration and court review of an adverse decision;
5 and all other rights accorded by the California Administrative Procedure Act and other applicable
6 laws.

7 8. Respondent, by its authorized representative, voluntarily, knowingly, and intelligently
8 waives and gives up each and every right set forth above.

9 **CULPABILITY**

10 9. Respondent, by its authorized representative, understands and agrees that the charges
11 and allegations in the Second Amended Accusation No. 3331, if proven at a hearing, constitute
12 cause for imposing discipline upon its Original Out of State Distributor Permit Number OSD
13 4574.

14 10. For the purpose of resolving the Second Amended Accusation without the expense
15 and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
16 establish a factual basis for the charges set forth in the First, Second and Fourth Causes for
17 Discipline in the Second Amended Accusation, and that Respondent hereby gives up its right to
18 contest those charges. Respondent denies the Third Cause for Discipline; and the Board agrees to
19 give up its right to prosecute that charge at hearing provided however, that the Board is not
20 making any representations or concessions regarding the strength of its allegations and claims
21 against Respondent on the Third Cause for Discipline.

22 11. Respondent agrees that its Original Out of State Distributor Permit is subject to
23 discipline and it agrees to be bound by the Board of Pharmacy (Board)'s probationary terms as set
24 forth in the Disciplinary Order below.

25 **CONTINGENCY**

26 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
27 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
28 communicate directly with the Board regarding this stipulation and settlement, without notice to

1 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
2 and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the
3 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
4 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
5 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
6 and the Board shall not be disqualified from further action by having considered this matter.

7 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
8 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
9 effect as the originals.

10 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
11 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
12 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
13 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
14 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
15 writing executed by an authorized representative of each of the parties.

16 15. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Board may, without further notice or formal proceeding, issue and enter the following
18 Disciplinary Order:

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Original Out of State Distributor Permit No. OSD 4574
21 issued to Respondent Superior Medical Supply, Inc. is revoked. However, the revocation is
22 stayed and Respondent is placed on probation for five (5) years on the following terms and
23 conditions.

24 **1. Obey All Laws**

25 Respondent shall obey all state and federal laws and regulations.

26 Respondent shall report any of the following occurrences to the Board, in writing, within
27 seventy-two (72) hours of such occurrence:

- 28 * an arrest or issuance of a criminal complaint for violation of any provision of the

1 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
2 substances laws

3 * a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
4 criminal complaint, information or indictment

5 * a conviction of any crime

6 * discipline, citation, or other administrative action filed by any state or federal agency
7 which involves Respondent's Original Out of State Distributor license number 4574
8 or which is related to the practice of pharmacy or the manufacturing, obtaining,
9 handling or distributing, billing, or charging for any drug, device or controlled
10 substance.

11 Failure to timely report any such occurrence shall be considered a violation of probation.

12 **2. Report to the Board**

13 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
14 designee. The report shall be made either in person or in writing, as directed. Among other
15 requirements, Respondent shall state in each report under penalty of perjury whether there has
16 been compliance with all the terms and conditions of probation.

17 Failure to submit timely reports in a form as directed shall be considered a violation of
18 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
19 total period of probation. Moreover, if the final probation report is not made as directed,
20 probation shall be automatically extended until such time as the final report is made and accepted
21 by the Board.

22 **3. Quarterly Report to the Board Regarding California Locations**

23 Respondent shall prepare and submit quarterly reports on all locations in California to
24 which Respondent has sold or otherwise transferred dangerous drugs or dangerous devices during
25 the preceding quarter. The report shall be made in writing as directed by the Board or its
26 designee. Each report shall in summary fashion, list the names, addresses, and license numbers of
27 all California transferees or recipients. The report shall be certified under penalty of perjury by an
28 owner or officer of Respondent. Failure to submit timely reports as directed shall be considered a

1 violation of probation.

2 **4. Interview with the Board**

3 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
4 with the Board or its designee, at such intervals and locations as are determined by the Board or
5 its designee. Failure to appear for any scheduled interview without prior notification to Board
6 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
7 during the period of probation, shall be considered a violation of probation.

8 **5. Cooperate with Board Staff**

9 Respondent shall cooperate with the Board's inspection program and with the Board's
10 monitoring and investigation of Respondent's compliance with the terms and conditions of its
11 probation. Failure to cooperate shall be considered a violation of probation.

12 **6. Reimbursement of Board Costs**

13 Respondents Superior Medical and Jake Snyder shall be jointly and severally liable for
14 payment to the Board of costs of investigation and prosecution ("Costs") in this matter, which are
15 agreed to be twenty-five thousand five hundred forty dollars (\$25,540). As a condition precedent
16 to successful completion of probation, Respondent shall pay costs of investigation and
17 prosecution in accord with this agreement.

18 It shall be Respondents' responsibility make these payments in a timely manner. Failure to
19 pay costs by the deadline(s) as directed shall be considered a violation of probation.

20 The filing of bankruptcy by Respondent shall not relieve Respondent of its responsibility to
21 reimburse the Board its costs of investigation and prosecution.

22 **7. Administrative Fine**

23 In addition to paying the Costs set forth in Condition 6 above, Respondent shall pay an
24 administrative fine ("Fine") in the amount of eighty thousand dollars (\$80,000), for a total
25 payment obligation of one hundred five thousand five hundred forty dollars (\$105,540.00).
26 Respondent shall pay the Costs and Fine by making installment payments pursuant to the
27 following payment plan approved by the Board.

28 Respondents Superior Medical and Jake Snyder shall jointly and severally make said

1 payments over a period of five (5) years as follows:

2 Respondents shall make monthly payments of \$1,759.00 as directed by the Board or its
3 designee, on or about the first day of each month, said payments commencing thirty (30) days
4 after the effective date of the decision, and continuing for 60 consecutive months thereafter.

5 Respondents may pay the full remaining unpaid balance of the Costs together with the Fine at any
6 time.

7 There shall be no deviation from this schedule absent prior written approval by the Board or
8 its designee, which approval shall not be unreasonably withheld. Respondent may pay the full
9 remaining unpaid balance at any time. Failure to pay the Costs together with the Fine by the
10 deadline(s) as directed shall be considered a violation of probation.

11 Neither the filing of bankruptcy by Respondent, nor the cancellation, forfeiture, suspension
12 or surrender of Respondent's license, shall relieve Respondent of its responsibility to pay the
13 Costs and Fine under this settlement.

14 **8. Probation Monitoring Costs**

15 Costs associated with probation monitoring for Respondent, including all costs associated
16 with the out-of-state inspections required under Condition 16, are included in the administrative
17 fine required to be paid under Condition 7, and will be deemed paid-in-full when the
18 administrative fine is paid-in-full.

19 **9. Status of License**

20 Respondent shall, at all times while on probation, maintain current licensure with the
21 Board. If Respondent submits an application to the Board, and the application is approved, for a
22 change of location, change of permit or change of ownership, the Board shall retain continuing
23 jurisdiction over the license, and the Respondent shall remain on probation as determined by the
24 Board. Failure to maintain current licensure shall be considered a violation of probation.

25 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
26 during the period of probation, including any extensions thereof or otherwise, upon renewal or
27 reapplication Respondent's license shall be subject to all terms and conditions of this probation
28 not previously satisfied.

1 **10. License Surrender While on Probation/Suspension**

2 Following the effective date of this decision, should Respondent discontinue business,
3 Respondent may tender the premises license to the Board for surrender. The Board or its
4 designee shall have the discretion whether to grant the request for surrender or take any other
5 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
6 license, Respondent will no longer be subject to the terms and conditions of probation.

7 Upon acceptance of the surrender, Respondent shall relinquish the premises wall and
8 renewal license to the Board within ten (10) days of notification by the Board that the surrender is
9 accepted. Respondent shall further submit a completed Discontinuance of Business form
10 according to Board guidelines and shall notify the Board of the records inventory transfer.

11 Respondent may not apply for any new licensure from the Board for three (3) years from
12 the effective date of the surrender. Respondent shall meet all requirements applicable to the
13 license sought as of the date the application for that license is submitted to the Board.

14 Respondent further stipulates that it shall reimburse the Board for its costs of investigation
15 and prosecution prior to the acceptance of the surrender.

16 **11. Notice to Employees**

17 Respondent shall, upon or before the effective date of this decision, ensure that all
18 employees involved in permit operations are made aware of all the terms and conditions of
19 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
20 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
21 remain posted throughout the probation period. Respondent shall ensure that any employees
22 hired or used after the effective date of this decision are made aware of the terms and conditions
23 of probation by posting a notice, circulating a notice, or both. Additionally, Respondent shall
24 submit written notification to the Board, within fifteen (15) days of the effective date of this
25 decision, that this term has been satisfied. Failure to submit such notification to the Board shall
26 be considered a violation of probation.

27 "Employees" as used in this provision includes all full-time, part-time,
28 volunteer, temporary and relief employees and independent contractors employed or

1 hired at any time during probation.

2 **12. Owners and Officers: Knowledge of the Law**

3 Respondent shall provide, within thirty (30) days after the effective date of this decision,
4 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
5 or more of the interest in Respondent or Respondent's stock, and any officer, stating under
6 penalty of perjury that said individuals have read and are familiar with state and federal laws and
7 regulations governing the practice of pharmacy. The failure to timely provide said statements
8 under penalty of perjury shall be considered a violation of probation.

9 **13. Posted Notice of Probation**

10 Respondent shall prominently post a probation notice provided by the Board in a place
11 conspicuous and readable to the public. The probation notice shall remain posted during the
12 entire period of probation.

13 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
14 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
15 member of the public, or other person(s) as to the nature of and reason for the probation of the
16 licensed entity.

17 Failure to post such notice shall be considered a violation of probation.

18 **14. Violation of Probation**

19 If Respondent has not complied with any term or condition of probation, the Board shall
20 have continuing jurisdiction over Respondent's license, and probation shall be automatically
21 extended until all terms and conditions have been satisfied or the Board has taken other action as
22 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
23 probation, and to impose the penalty that was stayed.

24 If Respondent violates probation in any respect, the Board, after giving Respondent notice
25 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
26 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
27 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
28 a petition to revoke probation or an accusation is filed against Respondent during probation, the

1 Board shall have continuing jurisdiction and the period of probation shall be automatically
2 extended until the petition to revoke probation or accusation is heard and decided.

3 **15. Completion of Probation**

4 Upon written notice by the Board or its designee indicating successful completion of
5 probation, Respondent's license will be fully restored.

6 **16. Quarterly Inspection of Premises and Facilities**

7 Respondent shall submit to the Board's inspection of any and all premises and facilities
8 operated or maintained by Respondent and licensed by the Board, in or outside of the state of
9 California, on a quarterly basis, on random dates, throughout the period of probation. The
10 Board's quarterly inspections will evaluate Respondent for reasonable compliance with California
11 and federal laws and regulations applicable to the specific type of California wholesaler license,
12 whether resident or non-resident, held by Respondent in connection with an individual facility.
13 During such inspections, Respondent shall cooperate fully with the Board's inspectors, and
14 failure to cooperate in any respect shall be considered a violation of probation.

15 After the first year of probation, the Board or its designee may modify the above
16 inspection requirement, so long as Respondent is fully compliant with all other conditions of the
17 probation order.

18 **17. Compliance with California Laws Regarding Transfer of Pharmaceuticals**

19 Respondent shall comply with California Business and Professions Code section 4126.5¹,

20 _____
21 ¹ Parties stipulate and agree that the version of California Business and Professions Code section 4126.5
operative at the time of this settlement agreement, provides in pertinent part as follows:

22 "(a) A pharmacy may furnish dangerous drugs only to the following:

23 (1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was
24 acquired.

25 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

26 (3) A licensed wholesaler acting as a reverse distributor.

27 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in
28 the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a
quantity sufficient to alleviate the temporary shortage.

(continued...)

1 including that Respondent shall not accept any returns or other transfers from any pharmacy of
2 dangerous drugs or devices not sold thereto by Respondent, absent written approval of the Board
3 of Pharmacy or its designated representative.

4 **18. Verified-Accredited Wholesale Distributors (VAWD) Accreditation**

5 Respondent shall within thirty (30) days after the effective date of this order, apply for
6 accreditation and/or otherwise commence good faith efforts to obtain accreditation by the
7 Verified-Accredited Wholesale Distributors (VAWD) program sponsored by the National
8 Association of Boards of Pharmacy. *In the event* Respondent is approved for VAWD
9 accreditation at any time during the probation period, *thereafter* Respondent shall protect and
10 maintain the VAWD accreditation as a condition of its probation, so that a loss of VAWD
11 accreditation by Respondent, once obtained, shall be considered a violation of probation.

12 While the Board takes no formal position as to whether Respondent is eligible for or
13 entitled to VAWD accreditation or licensure/re-licensure in other jurisdictions, the Board does not
14 intend for this stipulated settlement to prohibit such accreditation.

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23 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

24 (6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

25 (7) To another pharmacy under common control.

26 (d) For purposes of this section, "common control" means the power to direct or cause the direction of the
27 management and policies of another person whether by ownership, by voting rights, by contract, or by other
28 means."

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ACCEPTANCE

I, Mark C. Snyder, Chief Executive Officer and authorized representative of Respondent Superior Medical Supply Incorporated, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with Gus Michaels, Gabriel Carter, and Craig Weinstein, attorneys for Respondent. I understand the stipulation and the effect it will have on my Original Out of State Distributor Permit No. OSD 4574. As the authorized representative of the license holder, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: _____

signature pages attached

SUPERIOR MEDICAL SUPPLY INC.
MARK C. SNYDER, CEO
Respondent

I have read and fully discussed with Mark C. Snyder, authorized representative of Respondent Superior Medical Supply Inc., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

GUS MICHAELS
Attorney for Respondent

DATED: _____

GABRIEL CARTER
Attorney for Respondent

DATED: _____

CRAIG WEINSTEIN
Attorney for Respondent

ACCEPTANCE

I, Mark C. Snyder, Chief Executive Officer and authorized representative of Respondent Superior Medical Supply Incorporated, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with Gus Michaels, Gabriel Carter, and Craig Weinstein, attorneys for Respondent. I understand the stipulation and the effect it will have on my Original Out of State Distributor Permit No. OSD 4574. As the authorized representative of the license holder, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

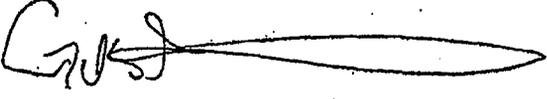
DATED: 08/31/2011



SUPERIOR MEDICAL SUPPLY INC.
MARK C. SNYDER, CEO
Respondent

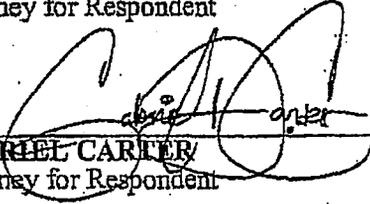
I have read and fully discussed with Mark C. Snyder, authorized representative of Respondent Superior Medical Supply Inc., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/31/11



GUS MICHAELS
Attorney for Respondent

DATED: 08/31/2011



GABRIEL CARTER
Attorney for Respondent

DATED: _____

CRAIG WEINSTEIN
Attorney for Respondent

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ACCEPTANCE

I, Mark C. Snyder, Chief Executive Officer and authorized representative of Respondent Superior Medical Supply Incorporated, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with Gus Michaels, Gabriel Carter, and Craig Weinstein, attorneys for Respondent. I understand the stipulation and the effect it will have on my Original Out of State Distributor Permit No. OSD 4574. As the authorized representative of the license holder, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: _____
SUPERIOR MEDICAL SUPPLY INC.
MARK C. SNYDER, CEO
Respondent

I have read and fully discussed with Mark C. Snyder, authorized representative of Respondent Superior Medical Supply Inc., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/31/11 _____
GUS MICHAELS
Attorney for Respondent

DATED: _____
GABRIEL CARTER
Attorney for Respondent

DATED: 9/31/2011 _____
CRAIG WEINSTEIN
Attorney for Respondent

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ACCEPTANCE

I, Mark C. Snyder, Chief Executive Officer and authorized representative of Respondent Superior Medical Supply Incorporated, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with Gus Michaels, Gabriel Carter, and Craig Weinstein, attorneys for Respondent. I understand the stipulation and the effect it will have on my Original Out of State Distributor Permit No. OSD 4574. As the authorized representative of the license holder, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: _____
SUPERIOR MEDICAL SUPPLY INC.
MARK C. SNYDER, CEO
Respondent

I have read and fully discussed with Mark C. Snyder, authorized representative of Respondent Superior Medical Supply Inc., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/31/11 _____
GUS MICHAELS
Attorney for Respondent

DATED: _____
GABRIEL CARTER
Attorney for Respondent

DATED: _____
CRAIG WEINSTEIN
Attorney for Respondent

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ENDORSEMENT

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

Dated: *September 1, 2011*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



HEATHER HUA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 3331

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2574
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3331

12 **SUPERIOR MEDICAL SUPPLY INC.;**
13 **MARK C. SNYDER, CEO**
14 **11005 Dover Street, Suite 100**
15 **Westminster, CO 80021**

SECOND AMENDED
ACCUSATION

15 Original Out of State Distributor Permit No.
16 OSD 4574

16 and

17 **JAKE J. SNYDER,**
18 **Designated Representative-in-Charge**
19 **P.O. BOX 270930**
20 **Superior, CO 80027**

20 Original Certificate Number EXC 18204

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

28

1 provisions of Chapter 9 of the pharmacy laws of the State of California (commencing with section
2 4300).

3 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
4 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
5 disciplinary action during the period within which the license may be renewed, restored, reissued
6 or reinstated.

7 10. Section 4161 of the Code provides, in part, as follows:

8 “(a) A person located outside this state that ships, mails, or delivers dangerous drugs or
9 dangerous devices into this state shall be considered a nonresident wholesaler.

10 (b) A nonresident wholesaler shall be licensed by the board prior to shipping, mailing, or
11 delivering dangerous drugs or dangerous devices to a site located in this state.

12 ...

13 (j) The designated representative-in-charge shall be responsible for the nonresident
14 wholesaler’s compliance with state and federal laws governing wholesalers. . . .”

15 11. Section 4301 of the Code states, in part, as follows:

16 “The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19 ...

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

22 ...

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

27 12. Section 4169 of the Code states, in pertinent part:

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

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...
(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.”

13. Code section 651, subdivision (a), provides as follows:

“(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.”

14. Section 4341 provides that, “Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.”

15. Health and Safety Code section 11255 provides:

“The taking of any order, or making of any contract or agreement, by any traveling representative or employee of any person for future delivery in this state, of any controlled substance constitutes a sale with the meaning of this division.”

16. Health and Safety Code section 111335 provides:

“Any drug or device is misbranded if its labeling or packaging does not conform to the requirements of Chapter 4 (commencing section Section 110290).”

17. Health and Safety Code section 111440 provides:

“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded.”

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1 18. Title 21, Code of Federal Regulations, section 1301.11, provides in part:
2 “(a) Every person who manufactures, distributes, dispenses, imports, or exports any
3 controlled substance or who proposes to engage in the manufacture, distribution, dispensing,
4 importation or exportation of any controlled substance shall obtain a registration unless exempted
5 by law”

6 **COST RECOVERY**

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

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Sold or Offered for Sale Misbranded Drugs)**

13 **[Respondents Superior Medical and Snyder]**

14 20. Respondents Superior Medical and Snyder are subject to disciplinary action under
15 section 4301, subdivisions (j) and (o), in conjunction with Code section 4169, subdivision (a)(3)
16 and Health and Safety Code sections 111335, and/or 111440 in that Respondents sold or offered
17 for sale dangerous drugs that were misbranded. The circumstances are as follows:

- 18 a) From on or about February 28, 2008 through on or about June 4, 2008, Respondents
19 sold or offered for sale to doctors and clinics Medroxyprogesterone 150mg/ml pre-
20 filled syringes¹ that were misbranded with false or misleading labels that read
21 “Medroxy Progst PF (75/0.5mg) ml” or “Medroxy Proge (75/.5) 75/0.5mg” that
22 were manufactured by Advanced Compounding Pharmacy (ACP) located in North
23 Hollywood, California. The drugs were further misbranded in that the drugs were
24 labeled by ACP with a one-year expiration date when they were shipped outside of
25 California and with a 180-day expiration date when they were shipped in California.

26
27 ¹ Medroxyprogesterone Acetate Suspension 150mg/ml prefilled syringes are the generic name for
28 the commercially available drug Depo Provera 150mg/ml prefilled syringes. The drug is a long acting
birth control drug injected every 12 weeks.

1 section 1301.11(a) and Health and Safety Code section 11255, in that Respondents took orders
2 for and/or made contracts or agreements for delivery of controlled substances within California
3 and without a valid registration to do so. The circumstances are as follows:

4 a) Between February 29, 2008 and July 24, 2008, Superior Medical Supply, Inc.,
5 located at 11005 Dover Street, Suite 1100, in Westminster, Colorado, was **not**
6 registered with the Drug Enforcement Agency (DEA) to distribute, dispense, import
7 or export any controlled substances.

8 b) Between February 29, 2008 and July 24, 2008, Respondents took orders for their
9 customers, *i.e.*, doctors and medical facilities for Schedule CII, III, IV, and V
10 controlled substances and placed the orders with Advanced Compounding
11 Pharmacy. Advanced Compounding Pharmacy drop shipped the orders to
12 Respondents' customers and invoiced Respondents for the controlled substances
13 drop shipped. Respondents paid Advanced Compounding Pharmacy for the order
14 and invoiced the doctors and medical facilities directly for the controlled substances
15 distributed.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Selling Dangerous Drugs from Unlicensed Manufacturer)**

18 **[Respondents Superior Medical and Snyder]**

19 23. Respondents Superior Medical and Snyder are subject to disciplinary action under
20 section 4033, subdivision (a)(1), in that Respondents sold dangerous drugs from an unlicensed
21 manufacturer. The circumstances are as follows:

22 a) An investigation conducted on June 19, 2008, showed that Advanced Compounding
23 Pharmacy located in North Hollywood, during the period from January 1, 2008 through
24 June 1, 2008, was an unlicensed manufacturer of sterile injectable drugs. Advanced
25 Compounding Pharmacy sent to Respondents' customers throughout the United States
26 sterile injectable drugs that were brokered through Respondents. Advanced Compounding
27 Pharmacy drop shipped the drugs directly to the customers. Advanced Compounding
28 Pharmacy invoiced and received payment from Respondents, instead of the ultimate

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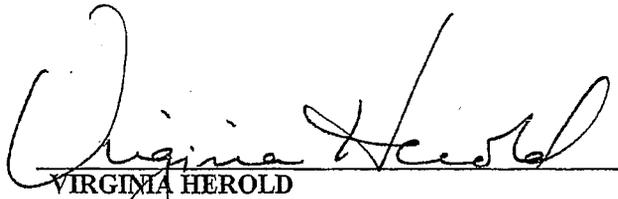
consumer. Respondents invoiced the customers directly with their profit added. This act constitutes selling dangerous drugs from an unlicensed manufacturer, which is a violation of pharmacy law.

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 Original Out of State Distributor Permit Number OSD 4574, issued to Respondent Superior Medical Supply Inc., Mark C. Snyder, CEO.
2. Revoking or suspending Original Certificate Number EXC 18204, issued to Respondent Jake J. Snyder, Designated Representative.
3. Ordering Respondents Superior Medical Supply Inc., Mark C. Snyder, CEO, and Jake J. Snyder, Representative-in-Charge, 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: 2/16/11



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