

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

In the Matter of the Accusation Against:

Case No. 4623

**ADVANCED PHARMACY HOMECARE, INC.
DBA ADVANCED PHARMACY HOMECARE
2127 C E Valley Parkway
Escondido, CA 92027**

Pharmacy Permit No. PHY 43316

and

**ANGELA RYAN FORCUCCI
1122 Via Vera Cruz,
San Marcos, CA 92078**

Pharmacist License No. RPH 49860

**STIPULATED SURRENDER OF
LICENSE AND ORDER (AS TO
ADVANCED PHARMACY HOMECARE,
INC. DBA ADVANCED PHARMACY
HOMECARE ONLY)**

Respondents.

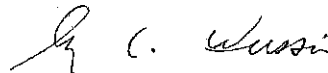
DECISION AND ORDER

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 March 25, 2015.

It is so ORDERED on March 18, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

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. 4623

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14 **DBA ADVANCED PHARMACY HOMECARE**
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**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Pharmacy Permit No. PHY 43316

16 and

17 **ANGELA RYAN FORCUCCI**
18 1122 Via Vera Cruz,
San Marcos, CA 92078

19 Pharmacist License No. RPH 49860

20 Respondents.
21

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

24 **PARTIES**

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

1 2. Advanced Pharmacy Homecare (Respondent) is represented in this proceeding by
2 attorney Noah E Jussim, Esq., whose address is McGuire Woods, 1800 Century Park East, 8th
3 Floor, Los Angeles , CA 90067.

4 3. On or about December 19, 1997, the Board of Pharmacy issued Pharmacy Permit
5 Number PHY 43316 to Advanced Pharmacy Homecare, Inc., to do business as Advanced
6 Pharmacy Homecare (Respondent Advanced). The Pharmacy Permit was in full force and effect
7 at all times relevant to the charges brought herein and will expire on December 1, 2015.

8 **JURISDICTION**

9 4. Accusation No. 4623 was filed before the Board of Pharmacy (Board), Department of
10 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
11 statutorily required documents were properly served on Respondent on March 4, 2014.
12 Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation
13 No. 4623 is attached as Exhibit A and incorporated by reference.

14 **ADVISEMENT AND WAIVERS**

15 5. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 4623. Respondent also has carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
18 Order.

19 6. Respondent is fully aware of its legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
21 its own expense; the right to confront and cross-examine the witnesses against them; the right to
22 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
23 the attendance of witnesses and the production of documents; the right to reconsideration and
24 court review of an adverse decision; and all other rights accorded by the California
25 Administrative Procedure Act and other applicable laws.

26 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

28

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 4623, agrees that cause exists for discipline and hereby surrenders their Pharmacy Permit No.
4 PHY 43316 for the Board's formal acceptance.

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

7 **RESERVATION**

8 10. The admissions made by Respondent herein are only for the purposes of this
9 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
10 licensing agency is involved, and shall not be admissible in any other criminal or civil
11 proceeding.

12 **CONTINGENCY**

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

22 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Surrender of License and Order, including Portable Document Format
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

25 13. This Stipulated Surrender of License and Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

1 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
2 executed by an authorized representative of each of the parties.

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

5 **ORDER**

6 **IT IS HEREBY ORDERED** that Pharmacy Permit No. PHY 43316, issued to Respondent
7 Advanced Pharmacy Homecare is surrendered and accepted by the Board of Pharmacy.

8 1. Respondent surrenders Pharmacy Permit No. PHY 43316 as of the effective date of
9 this decision. Respondent shall relinquish the premises wall license and renewal license to the
10 board within ten (10) days of the effective date of this decision.

11 2. The surrender of respondent's license and the acceptance of the surrendered license by
12 the board shall constitute the imposition of discipline against respondent. This decision
13 constitutes a record of discipline and shall become a part of respondent's license history with the
14 board.

15 3. Respondent shall, within ten (10) days of the effective date, arrange for the
16 destruction of, the transfer to, sale of or storage in a facility licensed by the board of all controlled
17 substances and dangerous drugs and devices. Respondent owner shall further provide written
18 proof of such disposition and submit a completed Discontinuance of Business form according to
19 board guidelines.

20 4. Respondent shall also, by the effective date of this decision, arrange for the
21 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
22 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
23 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
24 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
25 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
26 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
27 those patients for whom the pharmacy has on file a prescription with one or more refills
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1 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
2 days.

3 5. Respondent understands and agrees that if he or she ever files an application for a
4 licensed premises or a petition for reinstatement in the State of California, the board shall treat it
5 as a new application for licensure.

6 6. Respondent may not reapply for any license from the board for three (3) years from
7 the effective date of this decision. Respondent owner stipulates that should he or she apply for
8 any license from the board on or after the effective date of this decision, all allegations set forth in
9 the accusation shall be deemed to be true, correct and admitted by respondent when the board
10 determines whether to grant or deny the application. Respondent shall satisfy all requirements
11 applicable to that license as of the date the application is submitted to the board. Respondent is
12 required to report this surrender as disciplinary action.

13 7. Respondent stipulates that should he or she apply for any license from the board on or
14 after the effective date of this decision the investigation and prosecution costs in the amount of
15 \$9,270.00 shall be paid to the board prior to issuance of the new license.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Surrender of License and Order and have fully
18 discussed it with my attorney, Noah E Jussim, Esq.. I understand the stipulation and the effect it
19 will have on my Pharmacy Permit. I enter into this Stipulated Surrender of License and Order
20 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
21 Board of Pharmacy.

22
23 DATED: 11 February, 2015

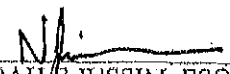
Lynn Ruth Lichterman
ADVANCED PHARMACY HOMECARE,
Respondent

24
25
26 I have read and fully discussed with Respondent Advanced Pharmacy Homecare the terms
27 and conditions and other matters contained in this Stipulated Surrender of License and Order. I

28 ///

1 approve its form and content.

2 DATED: 2/20/15


3 NOAHE JUSSIM, ESQ.
4 Attorney for Respondent

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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: 2/20/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



MORGAN MALEK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4623

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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14 **2127 C E Valley Parkway**
Escondido, CA 92027

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 43316**

16 **and**

17 **ANGELA RYAN FORCUCCI**
18 **1122 Via Vera Cruz,**
San Marcos, CA 92078

19 **Pharmacist License No. RPH 49860**

20 Respondents.

21
22
23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about December 19, 1997, the Board of Pharmacy issued Pharmacy Permit
28 Number PHY 43316 to Advanced Pharmacy Homecare, Inc., to do business as Advanced

1 Pharmacy Homecare (Respondent Advanced). The Pharmacy Permit was in full force and effect
2 at all times relevant to the charges brought herein and will expire on December 1, 2014, unless
3 renewed.

4 3. On or about September 15, 1997, the Board of Pharmacy issued Pharmacist License
5 Number RPH 49860 to Angela Ryan Forcucci (Respondent Forcucci). The Pharmacist License
6 was in full force and effect at all times relevant to the charges brought herein and will expire on
7 August 31, 2015, unless renewed.

8 JURISDICTION

9 4. This Accusation is brought before the Board of Pharmacy (Board), Department of
10 Consumer Affairs, under the authority of the following laws. All section references are to the
11 Business and Professions Code unless otherwise indicated.

12 5. Section 4011 of the Code provides that the Board shall administer and enforce both
13 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
14 Act [Health & Safety Code, § 11000 et seq.].

15 6. Section 4300(a) of the Code provides that every license issued by the Board may be
16 suspended or revoked.

17 7. Section 4300.1 of the Code states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued license
19 by operation of law or by order or decision of the board or a court of law, the
20 placement of a license on a retired status, or the voluntary surrender of a license by a
21 licensee shall not deprive the board of jurisdiction to commence or proceed with any
22 investigation of, or action or disciplinary proceeding against, the licensee or to render
23 a decision suspending or revoking the license.

24 STATUTORY PROVISIONS

25 8. Section 4022 of the Code states:

26 Dangerous drug" or "dangerous device" means any drug or device unsafe for
27 self-use in humans or animals, and includes the following:

28 (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,

1 the blank to be filled in with the designation of the practitioner licensed to use or
2 order use of the device.

3 (c) Any other drug or device that by federal or state law can be lawfully
4 dispensed only on prescription or furnished pursuant to Section 4006.

5 9. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include
6 "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,
7 agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes
8 possession of, any drug or device included in Section 4022."

9 10. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be
10 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
11 to the practice of pharmacy."

12 11. Section 4126.5 of the Code states:

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

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

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

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

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

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

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

27 (7) To another pharmacy under common control.

28 (b) Notwithstanding any other provision of law, a violation of this section
may subject the person or persons who committed the violation to a fine not to
exceed the amount specified in Section 125.9 for each occurrence pursuant to a
citation issued by the board.

(c) Amounts due from any person under this section on or after January 1,
2005, shall be offset as provided under Section 12419.5 of the Government Code.
Amounts received by the board under this section shall be deposited into the
Pharmacy Board Contingent Fund.

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

3 12. Section 4160 of the Code provides, in pertinent part, that a wholesaler license shall be
4 required for a person or entity to act as a wholesaler, that every wholesaler shall be supervised or
5 managed by a Designated Representative in Charge, and that the Designated Representative in
6 Charge shall be responsible for the wholesaler's compliance with state and federal laws.

7 13. Section 4301 of the Code states in pertinent part:

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

11

12 (o) Violating or attempting to violate, directly or indirectly, or assisting in
13 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
14 pharmacy, including regulations established by the board or by any other state or
15 federal regulatory agency.

16

16 REGULATORY PROVISIONS

17 14. California Code of Regulations, title 16, section 1709.1(a) states that "[t]he
18 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
19 responsibility for the daily operation of the pharmacy."

20 15. California Code of Regulations, title 16, section 1783, subdivision (d) provides, in
21 pertinent part, that a manufacturer or wholesaler shall not accept payment for, or allow the use of
22 an entity's credit to establish an account for, the purchase of dangerous drugs or devices from any
23 person other than the owner(s) or executive officer(s) listed on the permit, on a permit's account.

24 COST RECOVERY

25 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FACTUAL ALLEGATIONS**

4 17. From December 30, 2007 through March 28, 2011, Respondent Angela Forcucci was
5 the Pharmacist-in-Charge (PIC) of Advanced Pharmacy Homecare, Inc., dba Advanced Pharmacy
6 Homecare (Respondent Advanced).

7 18. From November 2, 2009 to February 25, 2011, Respondent Advanced sold or
8 furnished 1,856 dangerous drugs to McGowan Enterprises¹ on 701 different occasions for total
9 sales in the amount of \$712,316.84. Respondent Advanced was selling drugs to McGowan
10 Enterprises when Respondent Forcucci took over as the PIC in 2007. Respondent Advanced
11 continued to sell drugs to McGowan Enterprises after Respondent Forcucci became the PIC.
12 Respondent Forcucci did not have personal involvement in the ordering, billing, or selling of the
13 drug products to McGowan Enterprises.

14 19. Employees at McGowan Enterprises were given access to Respondent Advanced's
15 AmerisourceBergen on-line account, which allowed McGowan Enterprises to submit drug orders
16 directly to the primary wholesaler, AmerisourceBergen, using Respondent Advanced's account
17 information. When McGowan Enterprises ordered drugs under Advanced's account from
18 AmerisourceBergen, a purchase order number that included the purchaser's initials were used.
19 The Board inspector confirmed this practice with McGowan Enterprises' purchasing agent.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Functioning as Unlicensed Wholesalers)**

22 20. Respondents are subject to disciplinary action under Code section 4301(o), for
23 violating section 4160 of the Code, in that Respondents "sold" or furnished dangerous drugs to
24 McGowan Enterprises and by so doing acted as an unlicensed wholesaler, as set forth in
25 paragraphs 17 through 19, which are incorporated herein by reference.

26 ¹ On or about September 2, 1997, the Board of Pharmacy issued Wholesaler Permit
27 Number WLS 3336 to McGowan Enterprises Inc., doing business as C.A.T. Kits. On or about
28 September 27, 2012, McGowan Enterprises Inc. changed its name to do business as McGowan
Enterprises, Inc./Acute Care Pharmaceuticals.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Selling Dangerous Drugs Under Unauthorized Conditions)**

3 21. Respondents are subject to disciplinary action under Code section 4301(o), for
4 violating the pharmacy law, by selling or furnishing dangerous drugs to McGowen Enterprises
5 under unauthorized conditions, in violation of Code section 4126.5, as set forth in paragraphs 17
6 through 19, which are incorporated herein by reference.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unauthorized Use of its Account for Purchase of Drugs)**

9 22. Respondents are subject to disciplinary action under Code section 4301(o), for
10 violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of,
11 or conspired to violate, the laws and regulations governing pharmacy, when Respondents assisted
12 in, abetted, or conspired toward, transactions violating California Code of Regulations, title 16,
13 section 1783(d), by allowing McGowan Enterprises to purchase dangerous drugs from
14 Respondents' primary wholesalers on Respondent's accounts, as set forth in paragraphs 17
15 through 19, which are incorporated herein by reference.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(General Unprofessional Conduct)**

18 23. Respondents are subject to disciplinary action under Code section 4301, for general
19 unprofessional conduct when they allowed McGowen Enterprises to purchase dangerous drugs
20 from its primary wholesalers account, as set forth in paragraphs 17 through 19, which are
21 incorporated herein by reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Against Respondent Forcucci: Failure to Supervise)**

24 24. Respondent Forcucci is subject to disciplinary action under Code section 4301(o), for
25 violating California Code of Regulations, section 1709.1(a) when she failed to supervise or be
26 responsible for Respondent Advanced's sale or furnishing of dangerous drugs to McGowan
27 Enterprises, as set forth in paragraphs 17 through 19, which are incorporated herein by reference.
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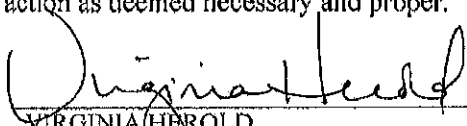
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PRAYER

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. Revoking or suspending Pharmacy Permit Number PHY 43316, issued to Advanced Pharmacy Homecare, Inc., to do business as Advanced Pharmacy Homecare (Respondent);
2. Revoking or suspending Pharmacist License Number RPH 49860, issued to Angela Ryan Forcucci (Respondent);
3. Ordering Respondents 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: 2/14/14



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

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