

**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**

Respondents.

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER AS TO  
ANGELA FORCUCCI, ONLY**

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary 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 September 8, 2015.

It is so ORDERED on August 7, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 MORGAN MALEK  
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*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:

Case No. 4623

12 **ADVANCED PHARMACY HOMECARE,**  
13 **INC., DBA ADVANCED PHARMACY**  
14 **HOMECARE**  
2127 C E Valley Parkway  
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**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO**  
**ANGELA FORCUCCI, ONLY**

15 **Pharmacy Permit No. PHY 43316**

16 **and**

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

20 **Pharmacist License No. RPH 49860**

21 Respondents.

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

1 D. Harris, Attorney General of the State of California, by Morgan Malek, Deputy Attorney  
2 General.

3 2. Respondent Angela Ryan Forcucci ("Respondent") is represented in this proceeding  
4 by attorney Fred Ray, Esq., whose address is: Fred Ray, Esq.  
5 1100 W. Town and Country Road, Suite 1010  
6 Orange, CA 92868-4651

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

10 **JURISDICTION**

11 4. Accusation No. 4623 was filed before the Board of Pharmacy (Board) , Department  
12 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
13 statutorily required documents were properly served on Respondent on March 4, 2014.  
14 Respondent timely filed her Notice of Defense contesting the Accusation.

15 5. A copy of Accusation No. 4623 is attached as exhibit A and incorporated herein by  
16 reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, fully discussed with counsel, and understands the  
19 charges and allegations in Accusation No. 4623. Respondent has also carefully read, fully  
20 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
21 Order.

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

1 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
2 every right set forth above.

3 **CULPABILITY**

4 9. Respondent understands and agrees that the charges and allegations in Accusation  
5 No. 4623, if proven at a hearing, constitute cause for imposing discipline upon his/her Original  
6 Pharmacist License No. 49860. Respondent hereby gives up his/her right to contest those charges.

7 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
8 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
9 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest  
10 those charges.

11 11. Respondent agrees that her Pharmacist license is subject to discipline and she agrees  
12 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

13 **CONTINGENCY**

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

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

26 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
3 writing executed by an authorized representative of each of the parties.

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

7 **DISCIPLINARY ORDER**

8 **IT IS HEREBY ORDERED** that Pharmacist license No. RPH 49860 issued to  
9 Respondent Angela Ryan Forcucci is revoked. However, the revocation is stayed and  
10 Respondent is placed on probation for four (4) years on the following terms and conditions.

11 **1. Obey All Laws**

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

13 Respondent shall report any of the following occurrences to the board, in writing, within  
14 seventy-two (72) hours of such occurrence:

- 15 • an arrest or issuance of a criminal complaint for violation of any provision of the  
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
17 substances laws
- 18 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
19 criminal complaint, information or indictment
- 20 • a conviction of any crime
- 21 • discipline, citation, or other administrative action filed by any state or federal agency  
22 which involves respondent's pharmacist license or which is related to the practice of  
23 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging  
24 for any drug, device or controlled substance.

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

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1           **2. Report to the Board**

2           Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
3           designee. The report shall be made either in person or in writing, as directed. Among other  
4           requirements, respondent shall state in each report under penalty of perjury whether there has  
5           been compliance with all the terms and conditions of probation. Failure to submit timely reports  
6           in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
7           in submission of reports as directed may be added to the total period of probation. Moreover, if  
8           the final probation report is not made as directed, probation shall be automatically extended until  
9           such time as the final report is made and accepted by the board.

10           **3. Interview with the Board**

11           Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
12           with the board or its designee, at such intervals and locations as are determined by the board or its  
13           designee. Failure to appear for any scheduled interview without prior notification to board staff,  
14           or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
15           the period of probation, shall be considered a violation of probation.

16           **4. Cooperate with Board Staff**

17           Respondent shall cooperate with the board's inspection program and with the board's  
18           monitoring and investigation of respondent's compliance with the terms and conditions of her  
19           probation. Failure to cooperate shall be considered a violation of probation.

20           **5. Continuing Education**

21           Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
22           pharmacist as directed by the board or its designee.

23           **6. Notice to Employers**

24           During the period of probation, respondent shall notify all present and prospective  
25           employers of the decision in case number 4623 and the terms, conditions and restrictions imposed  
26           on respondent by the decision, as follows:

27           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
28           respondent undertaking any new employment, respondent shall cause her direct supervisor,

1 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
2 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
3 individual(s) has/have read the decision in case number 4623, and terms and conditions imposed  
4 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)  
5 submit timely acknowledgment(s) to the board.

6 If respondent works for or is employed by or through a pharmacy employment service,  
7 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity  
8 licensed by the board of the terms and conditions of the decision in case number 4623 in advance  
9 of the respondent commencing work at each licensed entity. A record of this notification must be  
10 provided to the board upon request.

11 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
12 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
13 service, respondent shall cause her direct supervisor with the pharmacy employment service to  
14 report to the board in writing acknowledging that she has read the decision in case number 4623  
15 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
16 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

17 Failure to timely notify present or prospective employer(s) or to cause that/those  
18 employer(s) to submit timely acknowledgments to the board shall be considered a violation of  
19 probation.

20 "Employment" within the meaning of this provision shall include any full-time,  
21 part-time, temporary, relief or pharmacy management service as a pharmacist or any  
22 position for which a pharmacist license is a requirement or criterion for employment,  
23 whether the respondent is an employee, independent contractor or volunteer.

24 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
25 **Designated Representative-in-Charge, or Serving as a Consultant**

26 During the period of probation, respondent shall not supervise any intern pharmacist, be the  
27 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board  
28

1 nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
2 unauthorized supervision responsibilities shall be considered a violation of probation.

3 **8. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, respondent shall pay to the  
5 board its costs of investigation and prosecution in the amount of \$5,000. Respondent shall make  
6 said payments quarterly in the amount of \$312.50. Respondent shall make said payments to the  
7 Board as long as the total amount of \$5,000 is paid to the Board prior to the successful  
8 completion of Respondent's probation period.

9 There shall be no deviation from this schedule absent prior written approval by the board or  
10 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
11 probation.

12 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to  
13 reimburse the board its costs of investigation and prosecution.

14 **9. Probation Monitoring Costs**

15 Respondent shall pay any costs associated with probation monitoring as determined by the  
16 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
17 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
18 be considered a violation of probation.

19 **10. Status of License**

20 Respondent shall, at all times while on probation, maintain an active, current license with  
21 the board, including any period during which suspension or probation is tolled. Failure to  
22 maintain an active, current license shall be considered a violation of probation.

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

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

2           Following the effective date of this decision, should respondent cease practice due to  
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
4 respondent may tender her license to the board for surrender. The board or its designee shall have  
5 the discretion whether to grant the request for surrender or take any other action it deems  
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
8 record of discipline and shall become a part of the respondent's license history with the board.

9           Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to  
10 the board within ten (10) days of notification by the board that the surrender is accepted.  
11 Respondent may not reapply for any license from the board for three (3) years from the effective  
12 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
13 of the date the application for that license is submitted to the board, including any outstanding  
14 costs.

15           **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
16 **Employment**

17           Respondent shall notify the board in writing within ten (10) days of any change of  
18 employment. Said notification shall include the reasons for leaving, the address of the new  
19 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
20 shall further notify the board in writing within ten (10) days of a change in name, residence  
21 address, mailing address, or phone number.

22           Failure to timely notify the board of any change in employer(s), name(s), address(es), or  
23 phone number(s) shall be considered a violation of probation.

24           **13. Tolling of Probation**

25           Except during periods of suspension, respondent shall, at all times while on probation, be  
26 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any  
27 month during which this minimum is not met shall toll the period of probation, i.e., the period of  
28 probation shall be extended by one month for each month during which this minimum is not met.

1 During any such period of tolling of probation, respondent must nonetheless comply with all  
2 terms and conditions of probation.

3 Should respondent, regardless of residency, for any reason (including vacation) cease  
4 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,  
5 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
6 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
7 failure to provide such notification(s) shall be considered a violation of probation.

8 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
9 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
10 exceeding thirty-six (36) months.

11 "Cessation of practice" means any calendar month during which respondent is  
12 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
13 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
14 month during which respondent is practicing as a pharmacist for at least 40 hours as a  
15 pharmacist as defined by Business and Professions Code section 4000 et seq.

#### 16 **14. Violation of Probation**

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

22 If respondent violates probation in any respect, the board, after giving respondent notice  
23 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
24 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
25 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
26 a petition to revoke probation or an accusation is filed against respondent during probation, the  
27 board shall have continuing jurisdiction and the period of probation shall be automatically  
28 extended until the petition to revoke probation or accusation is heard and decided.

1           **15. Completion of Probation**

2           Upon written notice by the board or its designee indicating successful completion of  
3 probation, respondent's license will be fully restored.

4           **16. Community Services Program**

5           Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
6 board or its designee, for prior approval, a community service program in which respondent shall  
7 provide free health-care related services on a regular basis to a community or charitable facility or  
8 agency for at least 40 hours within the first 18 months of the probation period. Within thirty (30)  
9 days of board approval thereof, respondent shall submit documentation to the board  
10 demonstrating commencement of the community service program. A record of this notification  
11 must be provided to the board upon request. Respondent shall report on progress with the  
12 community service program in the quarterly reports. Failure to timely submit, commence, or  
13 comply with the program shall be considered a violation of probation.

14           **17. Remedial Education**

15           Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
16 board or its designee, for prior approval, an appropriate program of remedial education related to  
17 the grounds for discipline. The program of remedial education shall consist of at least 10 hours in  
18 pharmacy administration and keeping control over inventory, which shall be completed within 2  
19 years at respondent's own expense. All remedial education shall be in addition to, and shall not  
20 be credited toward, continuing education (CE) courses used for license renewal purposes.

21           Failure to timely submit or complete the approved remedial education shall be considered a  
22 violation of probation. The period of probation will be automatically extended until such  
23 remedial education is successfully completed and written proof, in a form acceptable to the board,  
24 is provided to the board or its designee.

25           Following the completion of each course, the board or its designee may require the  
26 respondent, at her own expense, to take an approved examination to test the respondent's  
27 knowledge of the course. If the respondent does not achieve a passing score on the examination,  
28 this failure shall be considered a violation of probation. Any such examination failure shall

1 require respondent to take another course approved by the board in the same subject area.

2 **18. Supervised Practice**

3 During the period of probation, respondent shall practice only under the supervision of a  
4 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
5 decision, respondent shall not practice pharmacy and her license shall be automatically suspended  
6 until a supervisor is approved by the board or its designee. The supervision shall be, as required  
7 by the board or its designee, either:

8 Continuous – At least 75% of a work week

9 Substantial - At least 50% of a work week

10 Partial - At least 25% of a work week

11 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

12 Within thirty (30) days of the effective date of this decision, respondent shall have her  
13 supervisor submit notification to the board in writing stating that the supervisor has read the  
14 decision in case number 4623 and is familiar with the required level of supervision as determined  
15 by the board or its designee. It shall be the respondent's responsibility to ensure that her  
16 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
17 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
18 acknowledgements to the board shall be considered a violation of probation.

19 If respondent changes employment, it shall be the respondent's responsibility to ensure that  
20 her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
21 the board. Respondent shall have her new supervisor, within fifteen (15) days after employment  
22 commences, submit notification to the board in writing stating the direct supervisor and  
23 pharmacist-in-charge have read the decision in case number 4623 and is familiar with the level of  
24 supervision as determined by the board. Respondent shall not practice pharmacy and her license  
25 shall be automatically suspended until the board or its designee approves a new supervisor.  
26 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
27 acknowledgements to the board shall be considered a violation of probation.

28 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

1 During suspension, respondent shall not enter any pharmacy area or any portion of the  
2 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
3 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
4 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
5 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
6 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
7 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
8 and controlled substances. Respondent shall not resume practice until notified by the board.

9 During suspension, respondent shall not engage in any activity that requires the  
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
12 designated representative for any entity licensed by the board.

13 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
14 licensed premises in which she holds an interest at the time this decision becomes effective unless  
15 otherwise specified in this order.

16 Failure to comply with this suspension shall be considered a violation of probation.

17 **19. No Ownership of Licensed Premises**

18 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
19 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
20 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
21 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
22 days following the effective date of this decision and shall immediately thereafter provide written  
23 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
24 documentation thereof shall be considered a violation of probation.

25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
27 discussed it with my attorney, Fred Ray, Esq.. I understand the stipulation and the effect it will  
28 have on my Pharmacist license. I enter into this Stipulated Settlement and Disciplinary Order

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voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 7/13/15   
ANGELA RYAN FORCUCCI  
Respondent

I have read and fully discussed with Respondent Angela Ryan Forcucci the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 7/13/15   
Fred Ray, Esq.  
Attorney for Respondent

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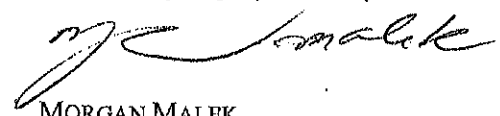
ENDORSEMENT

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

Dated: 7/13/15

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  
4 State Bar No. 263607  
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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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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4623

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13 **ADVANCED PHARMACY HOMECARE, INC.,**  
**DBA ADVANCED PHARMACY HOMECARE**  
14 **2127 C E Valley Parkway**  
**Escondido, CA 92027**

**ACCUSATION**

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 (e) 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  
federal regulatory agency.

15 . . . .

#### 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 Enterprises<sup>1</sup> 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 Foroucci 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(p), 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 <sup>1</sup> 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.



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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);

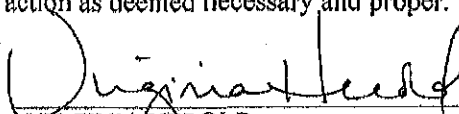
2. Revoking or suspending Pharmacist License Number RPH 49860, issued to Angela Ryan Forcucci (Respondent);

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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