



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
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RECEIVED BY
 BOARD OF PHARMACY

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

FEB 27 AM 9:53

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Advantacare Infusion</u>	Case No. <u>AC4771</u>
Address of Record: <u>S MANDEVILLE CT</u> <u>Monterey, CA 93950</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. AC4771, I hereby request to surrender my premises license, License No. PHY 48323. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature]
 Applicant's Signature

2-17-2017
 Date

[Signature]
 Executive Officer's Approval

2-17-2017
3/2-17
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 4771

**ADVANTACARE INFUSION
5 Mandeville Ct., Ste. 100
Monterey, CA 93940**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Pharmacy License No. PHY 48323

and

**DUNCAN LINCK MCCARTER
1209 Ocean View Blvd.
Pacific Grove, CA 93950**

Pharmacist License No. RPH 26117

Respondents.

DECISION AND ORDER

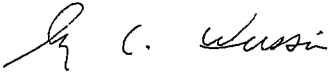
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 3, 2014.

It is so ORDERED on November 26, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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Attorney General of California
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4771

13 **ADVANTACARE INFUSION**
5 Mandeville Ct., Ste. 100
14 Monterey, CA 93940

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Pharmacy License No. PHY 48323**

16 **and**

17 **DUNCAN LINCK MCCARTER**
1209 Ocean View Blvd.
Pacific Grove, CA 93950

18 **Pharmacist License No. RPH 26117**

19 Respondents.
20

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

23 PARTIES

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

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

6 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
7 every right set forth above.

8 CULPABILITY

9 10. Respondents understand and agree that the charges and allegations in Accusation No.
10 4771, if proven at a hearing, constitute cause for imposing discipline upon Pharmacy Permit No.
11 PHY 48323 issued to Respondent AdvantaCare Infusion and Pharmacist License No. RPH 26117
12 issued to Respondent McCarter.

13 11. For the purpose of resolving the Accusation without the expense and uncertainty of
14 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual
15 basis for the charges in the Accusation, and Respondents hereby give up their right to contest
16 those charges.

17 12. Respondent AdvantaCare Infusion agrees that its Pharmacy Permit is subject to
18 discipline and it agrees to be bound by the Board's probationary terms as set forth in the
19 Disciplinary Order below.

20 13. Respondent McCarter agrees that his Pharmacist License is subject to discipline and
21 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
22 below.

23 CONTINGENCY

24 14. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
25 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
26 communicate directly with the Board regarding this stipulation and settlement, without notice to
27 or participation by Respondents or their counsel. By signing the stipulation, Respondents
28 understand and agree that they may not withdraw their agreement or seek to rescind the

1 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
2 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
3 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
4 the parties, and the Board shall not be disqualified from further action by having considered this
5 matter.

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

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

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

18 **DISCIPLINARY ORDER AS TO RESPONDENT ADVANTACARE INFUSION**

19 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 48323 issued to Respondent
20 AdvantaCare Infusion is revoked. However, the revocation is stayed and Respondent
21 AdvantaCare Infusion is placed on probation for three (3) years on the following terms and
22 conditions.

23 1. **Obey All Laws**

24 Respondent AdvantaCare Infusion shall obey all state and federal laws and regulations.
25 Respondent AdvantaCare Infusion shall report any of the following occurrences to the Board, in
26 writing, within seventy-two (72) hours of such occurrence:

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- 1 • an arrest or issuance of a criminal complaint for violation of any provision of the
- 2 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
- 3 substances laws
- 4 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
- 5 criminal complaint, information or indictment
- 6 • a conviction of any crime
- 7 • discipline, citation, or other administrative action filed by any state or federal agency
- 8 which involves Respondent AdvantaCare Infusion's Pharmacy Permit or which is
- 9 related to the practice of pharmacy or the manufacturing, obtaining, handling,
- 10 distributing, billing, or charging for any drug, device or controlled substance.

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

12 **2. Report to the Board**

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

23 Upon receipt of reasonable prior notice, Respondent AdvantaCare Infusion shall appear in
24 person for interviews with the Board or its designee, at such intervals and locations as are
25 determined by the Board or its designee. Failure to appear for any scheduled interview without
26 prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews
27 with the Board or its designee during the period of probation, shall be considered a violation of
28 probation.

1 **4. Cooperate with Board Staff**

2 Respondent AdvantaCare Infusion shall cooperate with the Board's inspection program and
3 with the Board's monitoring and investigation of Respondent AdvantaCare Infusion's compliance
4 with the terms and conditions of its probation. Failure to cooperate shall be considered a
5 violation of probation.

6 **5. Reimbursement of Board Costs**

7 Respondent AdvantaCare Infusion and Respondent McCarter shall be jointly and severally
8 liable for the reimbursement of Board costs. As a condition precedent to successful completion
9 of probation, Respondent AdvantaCare Infusion shall pay to the Board its costs of investigation
10 and prosecution in the amount of \$7,745. Respondents shall make said payments on a payment
11 plan approved by the Board.

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

15 The filing of bankruptcy by either Respondent AdvantaCare Infusion or Respondent
16 McCarter shall not relieve Respondents of their respective responsibility to reimburse the Board
17 its costs of investigation and prosecution.

18 **6. Probation Monitoring Costs**

19 Respondent AdvantaCare Infusion shall, at all times while on probation, pay any costs
20 associated with probation monitoring as determined by the Board. Such costs shall be payable to
21 the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
22 deadline(s) as directed shall be considered a violation of probation.

23 **7. Status of License**

24 Respondent AdvantaCare Infusion shall, at all times while on probation, maintain current
25 licensure with the Board. If Respondent AdvantaCare Infusion submits an application to the
26 Board, and the application is approved, for a change of location, change of permit or change of
27 ownership, the Board shall retain continuing jurisdiction over the license, and Respondent
28 AdvantaCare Infusion shall remain on probation as determined by the Board. Failure to maintain

1 current licensure shall be considered a violation of probation.

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

6 **8. License Surrender While on Probation/Suspension**

7 Following the effective date of this decision, should Respondent AdvantaCare Infusion
8 discontinue business, Respondent AdvantaCare Infusion may tender the premises license to the
9 Board for surrender. The Board or its designee shall have the discretion whether to grant the
10 request for surrender or take any other action it deems appropriate and reasonable. Upon formal
11 acceptance of the surrender of the license, Respondent AdvantaCare Infusion will no longer be
12 subject to the terms and conditions of probation.

13 Upon acceptance of the surrender, Respondent AdvantaCare Infusion shall relinquish the
14 premises wall and renewal license to the Board within ten (10) days of notification by the Board
15 that the surrender is accepted. Respondent AdvantaCare Infusion shall further submit a
16 completed Discontinuance of Business form according to Board guidelines and shall notify the
17 Board of the records inventory transfer. Respondent AdvantaCare Infusion shall also, by the
18 effective date of this decision, arrange for the continuation of care for ongoing patients of the
19 pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the
20 anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable
21 of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or
22 prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing
23 patients, Respondent AdvantaCare Infusion shall provide a copy of the written notice to the
24 Board. For the purposes of this provision, "ongoing patients" means those patients for whom the
25 pharmacy has on file a prescription with one or more refills outstanding, or for whom the
26 pharmacy has filled a prescription within the preceding sixty (60) days.

27 Should the Board accept the surrender, Respondent AdvantaCare Infusion may not apply
28 for any new licensure from the Board for three (3) years from the effective date of this

1 Disciplinary Order. Respondent AdvantaCare Infusion shall meet all requirements applicable to
2 the license sought as of the date the application for that license is submitted to the Board.

3 Respondent AdvantaCare Infusion further stipulates that Respondent AdvantaCare Infusion
4 shall reimburse the Board for its costs of investigation and prosecution prior to the acceptance of
5 the surrender.

6 **9. Notice to Employees**

7 Respondent AdvantaCare Infusion shall, upon or before the effective date of this decision,
8 ensure that all employees involved in permit operations are made aware of all the terms and
9 conditions of probation, either by posting a notice of the terms and conditions, circulating such
10 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent
11 place and shall remain posted throughout the probation period. Respondent AdvantaCare
12 Infusion shall ensure that any employees hired or used after the effective date of this decision are
13 made aware of the terms and conditions of probation by posting a notice, circulating a notice, or
14 both. Additionally, Respondent AdvantaCare Infusion shall submit written notification to the
15 Board, within fifteen (15) days of the effective date of this decision, that this term has been
16 satisfied. Failure to submit such notification to the Board shall be considered a violation of
17 probation.

18 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary
19 and relief employees and independent contractors employed or hired at any time during probation.

20 **10. Owners and Officers: Knowledge of the Law**

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

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11. Posted Notice of Probation

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

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

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

12. Violation of Probation

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

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

13. Completion of Probation

Upon written notice by the Board or its designee indicating successful completion of probation, Respondent AdvantaCare Infusion’s license will be fully restored.

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1 **16. Interview with the Board**

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

7 **17. Cooperate with Board Staff**

8 Respondent McCarter shall cooperate with the Board’s inspection program and with the
9 Board’s monitoring and investigation of Respondent McCarter’s compliance with the terms and
10 conditions of his probation. Failure to cooperate shall be considered a violation of probation.

11 **18. Continuing Education**

12 Respondent McCarter shall provide evidence of efforts to maintain skill and knowledge as a
13 pharmacist as directed by the Board or its designee.

14 **19. Notice to Employers**

15 During the period of probation, Respondent McCarter shall notify all present and
16 prospective employers of the decision in case number 4771 and the terms, conditions, and
17 restrictions imposed on Respondent McCarter by the decision, as follows:

18 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
19 Respondent McCarter undertaking any new employment, Respondent McCarter shall cause his
20 direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed
21 during Respondent McCarter’s tenure of employment) and owner to report to the Board in writing
22 acknowledging that the listed individual(s) has/have read the decision in case number 4771, and
23 terms and conditions imposed thereby. It shall be Respondent McCarter’s responsibility to ensure
24 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

25 If Respondent McCarter works for or is employed by or through a pharmacy employment
26 service, Respondent McCarter must notify his direct supervisor, pharmacist-in-charge, and owner
27 at every entity licensed by the Board of the terms and conditions of the decision in case number

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1 4771 in advance of Respondent McCarter commencing work at each licensed entity. A record of
2 this notification must be provided to the Board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of Respondent McCarter undertaking any new employment by or through a pharmacy
5 employment service, Respondent McCarter shall cause his direct supervisor with the pharmacy
6 employment service to report to the Board in writing acknowledging that he has read the decision
7 in case number 4771 and the terms and conditions imposed thereby. It shall be Respondent
8 McCarter's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
9 acknowledgment(s) to the Board.

10 Failure to timely notify present or prospective employer(s) or to cause that/those
11 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
12 probation.

13 "Employment" within the meaning of this provision shall include any full-time, part-time,
14 temporary, relief or pharmacy management service as a pharmacist or any position for which a
15 pharmacist license is a requirement or criterion for employment, whether Respondent McCarter is
16 an employee, independent contractor or volunteer.

17 **20. Reimbursement of Board Costs**

18 Respondent AdvantaCare Infusion and Respondent McCarter shall be jointly and severally
19 liable for the reimbursement of Board costs. As a condition precedent to successful completion
20 of probation, Respondent McCarter shall pay to the Board its costs of investigation and
21 prosecution in the amount of \$7,745. Respondents shall make said payments on a payment plan
22 approved by the Board.

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

26 The filing of bankruptcy by either Respondent AdvantaCare Infusion or Respondent
27 McCarter shall not relieve Respondents of their respective responsibility to reimburse the Board
28 its costs of investigation and prosecution.

1 **21. Probation Monitoring Costs**

2 Respondent McCarter shall pay any costs associated with probation monitoring as
3 determined by the Board each and every year of probation. Such costs shall be payable to the
4 Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
5 deadline(s) as directed shall be considered a violation of probation.

6 **22. Status of License**

7 Respondent McCarter shall, at all times while on probation, maintain an active, current
8 license with the Board, including any period during which suspension or probation is tolled.
9 Failure to maintain an active, current license shall be considered a violation of probation.

10 If Respondent McCarter's Pharmacist License expires or is cancelled by operation of law or
11 otherwise at any time during the period of probation, including any extensions thereof due to
12 tolling or otherwise, upon renewal or reapplication the Pharmacist License shall be subject to all
13 terms and conditions of this probation not previously satisfied.

14 **23. License Surrender While on Probation/Suspension**

15 Following the effective date of this decision, should Respondent McCarter cease practice
16 due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
17 probation, Respondent McCarter may tender his license to the Board for surrender. The Board or
18 its designee shall have the discretion whether to grant the request for surrender or take any other
19 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
20 license(s), Respondent McCarter will no longer be subject to the terms and conditions of
21 probation. This surrender constitutes a record of discipline and shall become a part of
22 Respondent McCarter's license history with the Board.

23 Upon acceptance of the surrender, Respondent McCarter shall relinquish his pocket and
24 wall license to the Board within ten (10) days of notification by the Board that the surrender is
25 accepted. Respondent McCarter may not reapply for any license from the Board for three (3)
26 years from the effective date of the surrender. Respondent McCarter shall meet all requirements
27 applicable to the license sought as of the date the application for that license is submitted to the
28 Board, including any outstanding costs.

1 **24. Notification of a Change in Name, Residence Address, Mailing Address or**
2 **Employment**

3 Respondent McCarter shall notify the Board in writing within ten (10) days of any change
4 of employment. Said notification shall include the reasons for leaving, the address of the new
5 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
6 McCarter shall further notify the Board in writing within ten (10) days of a change in name,
7 residence address, mailing address, or phone number.

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

10 **25. Tolling of Probation**

11 Except during periods of suspension, Respondent McCarter shall, at all times while on
12 probation, be employed as a pharmacist in California for a minimum of forty (40) hours per
13 calendar month. Any month during which this minimum is not met shall toll the period of
14 probation, i.e., the period of probation shall be extended by one month for each month during
15 which this minimum is not met. During any such period of tolling of probation, Respondent
16 McCarter must nonetheless comply with all terms and conditions of probation.

17 Should Respondent McCarter, regardless of residency, for any reason (including vacation)
18 cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month in
19 California, Respondent McCarter must notify the Board in writing within ten (10) days of the
20 cessation of practice, and must further notify the Board in writing within ten (10) days of the
21 resumption of practice. Any failure to provide such notification(s) shall be considered a violation
22 of probation.

23 It is a violation of probation for Respondent McCarter's probation to remain tolled pursuant
24 to the provisions of this condition for a total period, counting consecutive and non-consecutive
25 months, exceeding thirty-six (36) months.

26 "Cessation of practice" means any calendar month during which Respondent McCarter is
27 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and Professions
28 Code section 4000 et seq. "Resumption of practice" means any calendar month during which

1 Respondent McCarter is practicing as a pharmacist for at least forty (40) hours as a pharmacist as
2 defined by Business and Professions Code section 4000 et seq.

3 **26. Violation of Probation**

4 If Respondent McCarter has not complied with any term or condition of probation, the
5 Board shall have continuing jurisdiction over Respondent McCarter, and probation shall
6 automatically be extended, until all terms and conditions have been satisfied or the Board has
7 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,
8 to terminate probation, and to impose the penalty that was stayed.

9 If Respondent McCarter violates probation in any respect, the Board, after giving
10 Respondent McCarter notice and an opportunity to be heard, may revoke probation and carry out
11 the disciplinary order that was stayed. Notice and opportunity to be heard are not required for
12 those provisions stating that a violation thereof may lead to automatic termination of the stay
13 and/or revocation of the license. If a petition to revoke probation or an accusation is filed against
14 Respondent McCarter during probation, the Board shall have continuing jurisdiction and the
15 period of probation shall be automatically extended until the petition to revoke probation or
16 accusation is heard and decided.

17 **27. Completion of Probation**

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

20 **28. Remedial Education**

21 Within sixty (60) days of the effective date of this decision, Respondent McCarter shall
22 submit to the Board or its designee, for prior approval, an appropriate program of remedial
23 education related to inventory management, pharmacy law, and record keeping. The program of
24 remedial education shall consist of at least five (5) hours or five (5) continuing education (CE)
25 units, which shall be completed within one (1) year at Respondent McCarter's own expense. All
26 remedial education shall be in addition to, and shall not be credited toward, CE courses used for
27 license renewal purposes.

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1 Failure to timely submit or complete the approved remedial education shall be considered a
2 violation of probation. The period of probation will be automatically extended until such
3 remedial education is successfully completed and written proof, in a form acceptable to the
4 Board, is provided to the Board or its designee.

5 **29. No Additional Ownership of Licensed Premises While on Probation**

6 While on probation, Respondent McCarter shall not acquire any new ownership, legal or
7 beneficial interest nor serve as a manager, administrator, member, officer, director, trustee,
8 associate, or partner of any additional business, firm, partnership, or corporation licensed by the
9 Board. If Respondent McCarter currently owns or has any legal or beneficial interest in, or serves
10 as a manager, administrator, member, officer, director, trustee, associate, or partner of any
11 business, firm, partnership, or corporation currently or hereinafter licensed by the Board,
12 Respondent McCarter may continue to serve in such capacity or hold that interest, but only to the
13 extent of that position or interest as of the effective date of this decision. Violation of this
14 restriction shall be considered a violation of probation.

15 **30. Consultant for Owner or Pharmacist-In-Charge**

16 During the first two (2) years of probation, Respondent McCarter shall not supervise any
17 intern pharmacist, be the designated representative-in-charge of any entity licensed by the Board,
18 or serve as a consultant to any entity licensed by the Board. Respondent McCarter may be a
19 pharmacist-in-charge. However, if during the period of probation Respondent McCarter serves as
20 a pharmacist-in-charge, Respondent McCarter shall retain an independent consultant at his own
21 expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for
22 compliance by Respondent McCarter with state and federal laws and regulations governing the
23 practice of pharmacy and for compliance by Respondent McCarter with the obligations of a
24 pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with
25 the Board and whose name shall be submitted to the Board or its designee, for prior approval,
26 within thirty (30) days of the effective date of this decision. Respondent McCarter shall not be a
27 pharmacist-in-charge at more than one pharmacy. Failure to timely retain, seek approval of, or
28 ensure timely reporting by the consultant shall be considered a violation of probation.

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ENDORSEMENT

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

Dated: November 4, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



NICHOLAS TSUKAMAKI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4771

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

11 In the Matter of the Accusation Against:
12 **ADVANTACARE INFUSION**
13 **5 Mandeville Ct., Ste. 100**
Monterey, CA 93940
14 **Pharmacy License No. PHY 48323**
15 **and**
16 **DUNCAN LINCK MCCARTER**
17 **1209 Ocean View Blvd.**
Pacific Grove, CA 93950
18 **Pharmacist License No. RPH 26117**
19 Respondents.

Case No. 4771

A C C U S A T I O N

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about April 26, 2007, the Board of Pharmacy issued Pharmacy License No.
26 PHY 48323 to AdvantaCare Infusion (Respondent AdvantaCare). The Pharmacy License was in
27

28 *///*

1 full force and effect at all times relevant to the charges brought herein and will expire on April 1,
2 2014, unless renewed.

3 3. On or about July 15, 1969, the Board of Pharmacy issued Pharmacist License
4 Number RPH 26117 to Duncan Linck McCarter (Respondent McCarter). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on January 31, 2014, unless renewed. Since on or about August 20, 2007, and for all time
7 periods relevant to the charges herein, Respondent McCarter served and/or was reflected in Board
8 records as the Pharmacist-in-Charge (PIC) for Respondent AdvantaCare.

9 JURISDICTION

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

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

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

18 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
19 suspension of a Board-issued license, the placement of a license on a retired status, or the
20 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
21 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
22 licensee or to render a decision suspending or revoking the license.

23 STATUTORY PROVISIONS

24 8. Section 4301 of the Code provides in relevant part:

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

28 ...

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

3 ...

4 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
5 violation of or conspiring to violate any provision or term of this chapter or of the applicable
6 federal and state laws and regulations governing pharmacy, including regulations established by
7 the board or by any other state or federal regulatory agency.

8 ...”

9 9. Section 4059 of the Code, in pertinent part, prohibits the furnishing of any dangerous
10 drug or dangerous device except upon the prescription of an authorized prescriber.

11 10. Section 4081, subdivision (a) of the Code states:

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

21 11. Section 4105 of the Code provides, in relevant part:

22 “(a) All records or other documentation of the acquisition and disposition of dangerous
23 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
24 premises in a readily retrievable form.

25 ...

26 “(c) The records required by this section shall be retained on the licensed premises for a
27 period of three years from the date of making.

28 ...”

1 12. Section 4113, subdivision (c) of the Code states:

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

4 13. Section 4332 of the Code states:

5 “Any person who fails, neglects, or refuses to maintain the records required by Section
6 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects,
7 or refuses to produce or provide the records within a reasonable time, or who willfully produces
8 or furnishes records that are false, is guilty of a misdemeanor.”

9 14. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a
10 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
11 available for inspection by authorized officers of the law for a period of at least three years. In
12 cases where the pharmacy discontinues business, these records shall be maintained in a
13 board-licensed facility for at least three years.

14 15. Section 4021 of the Code provides that a “controlled substance” means any substance
15 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

16 16. Section 4022 of the Code states, in pertinent part:

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
18 except veterinary drugs that are labeled as such, and includes the following:

19 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
20 prescription,’ ‘Rx only,’ or words of similar import.

21 ...

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

24 17. Health and Safety Code section 11165 provides, in pertinent part, for the
25 establishment and maintenance of a Controlled Substance Utilization Review and Evaluation
26 System (CURES) for the electronic monitoring of and prescribing and dispensing of Schedule II,
27 III, and IV controlled substances, and requires, in pertinent part, that for each prescription for a
28 Schedule II, III, or IV controlled substance, the dispensing pharmacy or clinic transmit a report

1 with certain information on the patient, prescriber, controlled substance, and prescription, to the
2 California Department of Justice, on a weekly basis in a format prescribed by the California
3 Department of Justice.¹

4 REGULATORY PROVISIONS

5 18. California Code of Regulations, title 16, section 1707.1 provides, in pertinent part:

6 “(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions
7 filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not
8 continue to obtain prescription medications from that pharmacy.

9 “(1) A patient medication record shall be maintained in an automated data processing or
10 manual record mode such that the following information is readily retrievable during the
11 pharmacy’s normal operating hours.

12 “(A) The patient’s full name and address, telephone number, date of birth (or age) and
13 gender;

14 “(B) For each prescription dispensed by the pharmacy:

15 “1. The name, strength, dosage form, route of administration, if other than oral, quantity
16 and directions for use of any drug dispensed;

17 “2. The prescriber’s name and where appropriate, license number, DEA registration number
18 or other unique identifier;

19 “3. The date on which a drug was dispensed or refilled;

20 “4. The prescription number for each prescription; and

21 “5. The information required by section 1717.

22 ...

23 “(2) The patient medication record shall be maintained for at least one year from the date
24 when the last prescription was filled.”

25 ///

26 _____
27 ¹ Health and Safety Code section 11165 was first amended to impose CURES reporting
28 requirements effective January 1, 2005; as of that date, prescriptions for Schedule II and III drugs
had to be reported. Effective January 1, 2007, Schedule IV prescriptions also had to be reported.

1 19. California Code of Regulations, title 16, section 1714 provides, in relevant part:

2 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
3 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
4 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
5 of pharmacy.

6 ...

7 “(d) Each pharmacist while on duty shall be responsible for the security of the prescription
8 department, including provisions for effective control against theft or diversion of dangerous
9 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
10 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

11 20. California Code of Regulations, title 16, section 1715 provides, in pertinent part:

12 “(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section
13 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy’s
14 compliance with federal and state pharmacy law. The assessment shall be performed before July
15 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote
16 compliance through self-examination and education.

17 ...

18 “(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is
19 performed.”

20 21. California Code of Regulations, title 16, section 1717, subdivision (b) provides:

21 “(b) In addition to the requirements of Business and Professions Code section 4040, the
22 following information shall be maintained for each prescription on file and shall be readily
23 retrievable:

24 “(1) The date dispensed, and the name or initials of the dispensing pharmacist. All
25 prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising
26 pharmacist before they are dispensed.

27 “(2) The brand name of the drug or device; or if a generic drug or device is dispensed, the
28 distributor’s name which appears on the commercial package label; and

1 that Respondent AdvantaCare purchased numerous dangerous drugs in September 2011,
2 December 2011, and July 2012.

3 26. On or about August 21, 2012, Respondent McCarter told one of the inspectors that he
4 had ordered dangerous drugs for himself and his family. On the same day, the inspector faxed to
5 Respondent McCarter a letter requesting (1) copies of invoices of acquisition for any and all
6 purchases of dangerous drugs between August 22, 2009, and August 21, 2012; and (2) copies of
7 prescriptions/invoices for disposition of any and all dangerous drugs for the same time period.

8 27. On or about August 27, 2012, Respondent McCarter provided one of the inspectors
9 with some, but not all, of the invoices for the dangerous drugs listed on Respondent
10 AdvantaCare's then current wholesaler's report. The inspector then asked Respondent McCarter
11 for invoices from Respondent AdvantaCare's previous wholesaler beginning on August 22, 2009.
12 Respondent McCarter was unable to provide the inspector with these earlier invoices. The
13 inspector also asked Respondent McCarter for dispensing records. Respondent McCarter was
14 only able to produce one prescription record. The inspector then asked Respondent McCarter if
15 he could provide any other records. Respondent McCarter told the inspector that no other records
16 were available at that time. Furthermore, with one exception, Respondent McCarter did not
17 provide the inspector with any prescriptions for the dangerous drugs he had ordered for himself
18 and his family. Nor did Respondent McCarter maintain medication profiles for patients who had
19 prescriptions filled in the pharmacy.

20 28. On or about September 7, 2012, one of the inspectors requested and received from
21 Respondent AdvantaCare's previous wholesaler a summary of prescription medications
22 purchased by Respondent AdvantaCare between August 22, 2009, and August 20, 2012. The
23 summary indicates that on or about December 31, 2009, Respondent AdvantaCare purchased one
24 (1) sixteen ounce bottle of Cheratussin AC. Cheratussin contains codeine, a Schedule V
25 controlled substance and dangerous drug. Neither prescription information nor dispensing
26 information for the Cheratussin AC was readily retrievable by Respondent McCarter during the
27 pharmacy inspection on August 16, 2012.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Furnishing a Dangerous Drug Without a Prescription)**

3 29. Respondents are subject to disciplinary action under sections 4301, subdivision (j)
4 and/or (o), 4113, subdivision (c), and 4059 of the Code, in that Respondents furnished dangerous
5 drugs without a prescription of an authorized prescriber. The circumstances of Respondents'
6 conduct are set forth above in paragraphs 26-28.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Maintain and Preserve Records of Dangerous Drugs)**

9 30. Respondents are subject to disciplinary action under sections 4301, subdivision (j)
10 and/or (o), 4081, 4113, subdivision (c), 4332, and 4333 of the Code, and California Code of
11 Regulations, title 16, sections 1707.1, subdivision (a)(1)(B) and 1717, subdivision (b), in that
12 Respondents failed to maintain prescriptions and other records of the sale, acquisition, or
13 disposition of dangerous drugs, to make those records available for inspection, and to preserve
14 those records for at least three years from the date of making. The circumstances of Respondents'
15 conduct are set forth above in paragraphs 24-28.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Report Controlled Substance Prescriptions to CURES)**

18 31. Respondents are subject to disciplinary action under sections 4301, subdivision (j)
19 and/or (o) and 4113, subdivision (c) of the Code, and Health and Safety Code section 11165, in
20 that Respondents failed to transmit controlled substances dispensing data to CURES.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Retain Records of Dangerous Drugs on Licensed Premises)**

23 32. Respondents are subject to disciplinary action under sections 4301, subdivision (j)
24 and/or (o), 4105, subdivisions (a) and (c), and 4113, subdivision (c) of the Code, in that
25 Respondents failed to retain on the licensed premises in a readily retrievable form records or other
26 documentation of the acquisition and disposition of dangerous drugs for three years from the date
27 of making. The circumstances of Respondents' conduct are set forth above in paragraphs 24, 27,
28 and 28.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Patient Medication Profiles)**

3 33. Respondents are subject to disciplinary action under sections 4301, subdivisions (j)
4 and/or (o) and 4113, subdivision (c) of the Code, and California Code of Regulations, title 16,
5 section 1707.1, in that Respondents failed to maintain medication profiles for all patients who had
6 prescriptions filled in Respondents' pharmacy. The circumstances of Respondents' conduct are
7 set forth above in paragraph 27.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failure to Safely and Properly Secure Drugs)**

10 34. Respondents are subject to disciplinary action under sections 4301, subdivisions (j)
11 and/or (o) and 4113, subdivision (c) of the Code, and California Code of Regulations, title 16,
12 section 1714, subdivision (b), in that Respondents failed to safely and properly secure drugs. The
13 circumstances of Respondents' conduct are set forth above in paragraph 23.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Possession of Pharmacy Key by Non-Pharmacist)**

16 35. Respondents are subject to disciplinary action under sections 4301, subdivisions (j)
17 and/or (o) and 4113, subdivision (c) of the Code, and California Code of Regulations, title 16,
18 section 1714, subdivision (d), in that on or about August 16, 2012, a non-pharmacist employee of
19 Respondents' pharmacy was in possession of a key to the pharmacy.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Failure to Complete and Retain a Self-Assessment)**

22 36. Respondents are subject to disciplinary action under sections 4301, subdivisions (j)
23 and/or (o) and 4113, subdivision (c) of the Code, and California Code of Regulations, title 16,
24 section 1715, subdivisions (a) and (d), in that Respondent McCarter failed to complete and retain
25 a self-assessment of Respondent AdvantaCare's compliance with federal and state pharmacy law.
26 The circumstances of Respondents' conduct are set forth above in paragraph 24.

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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 License No. PHY 48323 issued to AdvantaCare Infusion (Respondent AdvantaCare);
2. Revoking or suspending Pharmacist License No. RPH 26117 issued to Duncan Linck McCarter (Respondent McCarter);
3. Ordering Respondent AdvantaCare and Respondent McCarter to jointly and severally be responsible 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 is deemed necessary and proper.

DATED: 5/10/14 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SF2013405537