

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

In the Matter of the Accusation Against:

**THOMAS MCGOWAN,
DBA JTM INFUSION
12225 World Trade Drive, Suite G
San Diego, CA 92128**

Pharmacy Permit No. PHY 43622

and

**JOHN ROSSI
2858 Loker Ave East
Carlsbad, CA 92010**

Pharmacist License No. RPH 33107

Case No. 5058

OAH No. 2014100373

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO JOHN
ROSSI ONLY**

Respondents.

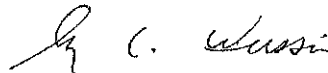
DECISION AND ORDER

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 June 4, 2015.

It is so ORDERED on May 28, 2015.

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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Pharmacy Permit No. PHY 43622
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16 **Pharmacist License No. RPH 33107**

Case No. 4860

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO JOHN
ROSSI ONLY**

17 Respondents.
18

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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 Morgan Malek, Deputy Attorney
27 General.
28

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

3 **CULPABILITY**

4 9. Respondent admits the truth of each and every charge and allegation in Accusation
5 No. 4860.

6 10. Respondent agrees that his Pharmacist is subject to discipline and he agrees to be
7 bound by the Board's probationary terms as set forth in the Disciplinary Order below.

8 **CONTINGENCY**

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

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

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

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1 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
2 in submission of reports as directed may be added to the total period of probation. Moreover, if
3 the final probation report is not made as directed, probation shall be automatically extended until
4 such time as the final report is made and accepted by the board.

5 **3. Interview with the Board**

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

11 **4. Cooperate with Board Staff**

12 Respondent shall cooperate with the board's inspection program and with the board's
13 monitoring and investigation of respondent's compliance with the terms and conditions of his
14 probation. Failure to cooperate shall be considered a violation of probation.

15 **5. Continuing Education**

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

18 **6. Notice to Employers**

19 During the period of probation, respondent shall notify all present and prospective
20 employers of the decision in case number 4860 and the terms, conditions and restrictions imposed
21 on respondent by the decision, as follows:

22 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
23 respondent undertaking any new employment, respondent shall cause his direct supervisor,
24 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
25 tenure of employment) and owner to report to the board in writing acknowledging that the listed
26 individual(s) has/have read the decision in case number 4860, and terms and conditions imposed
27 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
28 submit timely acknowledgment(s) to the board.

1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 4860 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 4860
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

21 During the period of probation, respondent shall not supervise any intern pharmacist, be the
22 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
23 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
24 unauthorized supervision responsibilities shall be considered a violation of probation.

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$1,808.60. Respondent may
28 make said payments to the Board as long as the total amount of \$1,808.60 is paid to the Board

1 prior to Respondent's wholesale permit being renewed by the Board on May 31, 2015. The Board
2 will not renew Respondent's Designated Representative until such costs are paid. Failure to pay
3 costs by the deadline(s) as directed shall be considered a violation of probation. There shall be no
4 deviation from this schedule absent prior written approval by the board or its designee.

5 The filing of bankruptcy by respondent shall not relieve respondent of their responsibility to
6 reimburse the board its costs of investigation and prosecution.

7 **9. Probation Monitoring Costs**

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

12 **10. Status of License**

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

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

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

21 Following the effective date of this decision, should respondent cease practice due to
22 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
23 respondent may tender his license to the board for surrender. The board or its designee shall have
24 the discretion whether to grant the request for surrender or take any other action it deems
25 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
26 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
27 record of discipline and shall become a part of the respondent's license history with the board.
28

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

7 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
8 **Employment**

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

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

16 **13. Tolling of Probation**

17 Except during periods of suspension, respondent shall, at all times while on probation, be
18 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
19 Any month during which this minimum is not met shall toll the period of probation, i.e., the
20 period of probation shall be extended by one month for each month during which this minimum is
21 not met. During any such period of tolling of probation, respondent must nonetheless comply
22 with all terms and conditions of probation.

23 Should respondent, regardless of residency, for any reason (including vacation) cease
24 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
25 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
26 must further notify the board in writing within ten (10) days of the resumption of practice. Any
27 failure to provide such notification(s) shall be considered a violation of probation.
28

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

4 "Cessation of practice" means any calendar month during which respondent is
5 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
6 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
7 month during which respondent is practicing as a pharmacist for at least forty (40)
8 hours as a pharmacist as defined by Business and Professions Code section 4000 et
9 seq.

10 **14. Violation of Probation**

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

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

23 **15. Completion of Probation**

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

26 **16. Remedial Education**

27 Within ninety (90) days of the effective date of this decision, respondent shall submit to the
28 board or its designee, for prior approval, an appropriate program of remedial education related to

1 Pharmacy law, pharmacy operations, and duties as a pharmacist-in-charge. The program of
2 remedial education shall consist of at least ten (10) hours a year, for three (3) years at
3 respondent's own expense, related to the pharmacy law, pharmacy operations, and Pharmacist In
4 Charge. All remedial education shall be in addition to, and shall not be credited toward,
5 continuing education (CE) courses used for license renewal purposes.

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

10 Following the completion of each course, the board or its designee may require the
11 respondent, at his own expense, to take an approved examination to test the respondent's
12 knowledge of the course. If the respondent does not achieve a passing score on the examination,
13 this failure shall be considered a violation of probation. Any such examination failure shall
14 require respondent to take another course approved by the board in the same subject area.

15 **17. Supervised Practice**

16 During the period of probation, respondent shall practice only under the supervision of a
17 licensed pharmacist not on probation with the board. Upon and after the effective date of this
18 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
19 until a supervisor is approved by the board or its designee. Respondent will have three (3)
20 business days to submit a supervisor for approval before suspension is imposed. The supervision
21 shall be, as required by the board or its designee, either:

22 Continuous – At least 75% of a work week

23 Substantial - At least 50% of a work week

24 Partial - At least 25% of a work week

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

26 Within thirty (30) days of the effective date of this decision, respondent shall have his
27 supervisor submit notification to the board in writing stating that the supervisor has read the
28 decision in case number 4860 and is familiar with the required level of supervision as determined

1 by the board or its designee. It shall be the respondent's responsibility to ensure that his
2 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
3 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
4 acknowledgements to the board shall be considered a violation of probation.

5 If respondent changes employment, it shall be the respondent's responsibility to ensure that
6 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
7 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
8 commences, submit notification to the board in writing stating the direct supervisor and
9 pharmacist-in-charge have read the decision in case number 4860 and is familiar with the level of
10 supervision as determined by the board. Respondent shall not practice pharmacy and his license
11 shall be automatically suspended until the board or its designee approves a new supervisor.
12 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
13 acknowledgements to the board shall be considered a violation of probation.

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

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

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

27 Subject to the above restrictions, respondent may continue to own or hold an interest in any
28 licensed premises in which he holds an interest at the time this decision becomes effective unless

1 otherwise specified in this order.

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

3 **18. No Ownership of Licensed Premises**

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

11 **19. Ethics Course**

12 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
13 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
14 Failure to initiate the course during the first year of probation, and complete it within the second
15 year of probation, is a violation of probation.

16 Respondent shall submit a certificate of completion to the board or its designee within five
17 days after completing the course.

18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
20 discussed it with my attorney, Earl M. Pott, Esq.. I understand the stipulation and the effect it
21 will have on my Pharmacist. I enter into this Stipulated Settlement and Disciplinary Order
22 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
23 Board of Pharmacy.

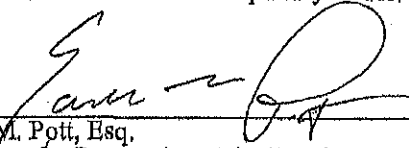
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25 DATED: 4/21/15 John Rossi
26 John Rossi
Respondent

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I have read and fully discussed with Respondent John Rossi the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/24/2015



Earl M. Pott, Esq.
Attorney for Respondent John Rossi


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ENDORSEMENT

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

Dated: Apr 28, 2015

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


MORGAN MALEK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4860

1 KAMALA D. HARRIS
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Attorneys for Complainant

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16 **and**
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18 **2858 Loker Ave East**
Carlsbad, CA 92010
19 **Pharmacist License No. RPH 33107**
20 Respondents.

Case No. 4860

A C C U S A T I O N

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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 October 20, 1998, the Board of Pharmacy issued Pharmacy Permit
28 Number PHY 43622 to Thomas McGowan, doing business as JTM Infusion. John Rossi has

1 been the Pharmacist-in-Charge since October 20, 1998. The Pharmacy Permit was in full force
2 and effect at all times relevant to the charges brought herein and will expire on October 1, 2013,
3 unless renewed.

4 3. On or about August 14, 1979, the Board of Pharmacy issued Pharmacist License
5 Number RPH 33107 to John Rossi. The Pharmacist License was in full force and effect at all
6 times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

7 JURISDICTION

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

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

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

16 7. Section 4300.1 of the Code states:

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

21 8. Section 4307(a) of the Code states that:

22 Any person who has been denied a license or whose license has been revoked
23 or is under suspension, or who has failed to renew his or her license while it was
24 under suspension, or who has been a manager, administrator, owner member, officer,
25 director, associate, or partner of any partnership, corporation, firm, or association
26 whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manager, administrator, owner,
member, officer, director, associate, or partner had knowledge or knowingly
participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manager, administrator,
owner, member, officer, director, associate, or partner of a licensee as follows:

27 (1) Where a probationary license is issued or where an existing license is placed
28 on probation, this prohibition shall remain in effect for a period not to exceed five
years.

1 (2) Where the license is denied or revoked, the prohibition shall continue until
the license is issued or reinstated.

2 **STATUTORY PROVISIONS**

3 9. Section 4022 of the Code states:

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

6 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

7 (b) Any device that bears the statement: "Caution: federal law restricts this
8 device to sale by or on the order of a _____," "Rx only," or words of similar import,
9 the blank to be filled in with the designation of the practitioner licensed to use or
order use of the device.

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

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

16 11. Section 4059.5(a) states:

17 Except as otherwise provided in this chapter, dangerous drugs or dangerous
18 devices may only be ordered by an entity licensed by the board and shall be delivered
19 to the licensed premises and signed for and received by a pharmacist. Where a
licensee is permitted to operate through a designated representative, the designated
representative shall sign for and receive the delivery.

20 12. Section 4081 of the Code states:

21 (a) All records of manufacture and of sale, acquisition, or disposition of
22 dangerous drugs or dangerous devices shall be at all times during business hours
open to inspection by authorized officers of the law, and shall be preserved for at
23 least three years from the date of making. A current inventory shall be kept by
every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
24 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
or establishment holding a currently valid and unrevoked certificate, license,
25 permit, registration, or exemption under Division 2 (commencing with Section
1200) of the Health and Safety Code or under Part 4 (commencing with Section
26 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
of dangerous drugs or dangerous devices.

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

5 13. Section 4105, subdivision (a) of the Code states: "All records or other documentation
6 of the acquisition and disposition of dangerous drugs and dangerous devices by any entity
7 licensed by the board shall be retained on the licensed premises in a readily retrievable form" and
8 section 4105, subdivision (c) of the Code states: "The records required by this section shall be
9 retained on the licensed premises for a period of three years from the date of making."

10 14. Section 4110(a) of the Code states:

11 No person shall conduct a pharmacy in the State of California unless he or she
12 has obtained a license from the board. A license shall be required for each pharmacy
13 owned or operated by a specific person. A separate license shall be required for each
14 of the premises of any person operating a pharmacy in more than one location. The
15 license shall be renewed annually. The board may, by regulation, determine the
16 circumstances under which a license may be transferred.

17 15. Section 4113(c) of the Code states:

18 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
19 with all state and federal laws and regulations pertaining to the practice of pharmacy.

20 16. Section 4126.5(a), of the Code states:

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

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

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

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

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

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

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

(7) To another pharmacy under common control.

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

18. Section 4169 of the Code states in pertinent part:

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

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

....

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

....

19. Section 4301 of the Code states in pertinent part:

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

....

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

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

....

20. Section 4312(b) of the Code states that:

...

In the event that the license of a wholesaler, pharmacy, or veterinary food-

1 animal drug retailer is cancelled pursuant to subdivision (a) or revoked pursuant to
2 Article 19 (commencing with Section 4300), or a wholesaler, pharmacy, or veterinary
3 food-animal drug retailer notifies the board of its intent to remain closed or to
4 discontinue business, the licensee shall, within 10 days thereafter, arrange for the
5 transfer of all dangerous drugs and controlled substances or dangerous devices to
6 another licensee authorized to possess the dangerous drugs and controlled substances
7 or dangerous devices. The licensee transferring the dangerous drugs and controlled
8 substances or dangerous devices shall immediately confirm in writing to the board
9 that the transfer has taken place.

10 ...
11 21. Section 4328 of the Code states that:

12 Except as otherwise provided in this chapter, any person who permits the
13 compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in
14 his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor.

15 REGULATORY PROVISIONS

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

19 23. California Code of Regulations, title 16, section 1718 states in pertinent part that
20 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code
21 shall be considered to include complete accountability for all dangerous drugs handled by every
22 licensee enumerated in Sections 4081 and 4332."

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

27 COST RECOVERY

28 25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

1 **FACTUAL ALLEGATIONS**

2 26. Since October 20, 1998 and at all times referenced herein, Respondent John Rossi
3 (Respondent Rossi) was the Pharmacist-in-Charge (PIC) of Respondent Thomas McGowan,
4 doing Business as JTM Infusion (Respondent JTM Infusion). On January 7, 2011, Respondent
5 Rossi completed, initialed and executed a self-assessment form representing Respondent JTM
6 Infusion's compliance with federal and state pharmacy laws. In response to the question,
7 "[d]angerous drugs and Dangerous devices are only delivered to the licensed premise, and signed
8 for and received by a pharmacist," Respondent Rossi answered "N/A." In response to the
9 question, "[t]he pharmacy has a PIC that is responsible for the daily operation of the pharmacy,"
10 Respondent Rossi answered "[y]es." In response to the question "[t]his pharmacy furnishes
11 dangerous drugs in compliance with B&PC 4126.5...", Respondent Rossi answered "N/A." In
12 response to the question, "[a]ll drug acquisition and disposition records (complete accountability)
13 are maintained for at least three years..." Respondent Rossi answered "[y]es."

14 27. Respondent Thomas McGowan, doing business as JTM Infusion (Respondent JTM
15 Infusion) is the same individual who owned McGowan Enterprises, doing business as McGowan
16 Enterprises, Inc./Acute Care Pharmaceuticals (McGowan Enterprises), a person licensed as a
17 wholesaler with the Board.

18 28. In or about November 2011, Respondent JTM Infusion moved its premises from
19 Suite G to Suite C at the same street address without notifying the Board. Its premises were
20 located within Respondent McGowan Enterprises and were approximately the size of a closet.
21 There was no separate ingress or egress to its premises. Respondent JTM Infusion had no
22 pharmacy staff other than Respondent Rossi who was rarely present at Respondent JTM
23 Infusion's premises. Respondent Rossi, the PIC, did not possess a key to the premises of
24 Respondent JTM Infusion.

25 29. Dangerous drug orders were signed for and received by unlicensed warehouse
26 workers, a licensed pharmacy technician, marketing staff or a designated representative for
27 McGowan Enterprises at McGowan Enterprises, without a pharmacist present to accept them.
28 Respondent JTM Infusion was not open for business at least one day per week and the last time

1 Respondent JTM Infusion filled a patient specific prescription was prior to 2000. No inventory of
2 drugs was held by Respondent JTM Infusion.

3 30. McGowan Enterprises ordered dangerous drugs using Respondent JTM Infusion's
4 Pharmacy License and re-sold the drugs "purchased" or furnished by Respondent JTM Infusion
5 without Respondent Rossi's knowledge. McGowan Enterprises never paid Respondent JTM
6 Infusion for the dangerous drugs that it "purchased" or obtained from Respondent JTM Infusion.
7 Respondents did not maintain the records of disposition for dangerous drugs "sold" or furnished
8 to McGowan Enterprises. McGowan Enterprises maintained the pedigrees involved in the drug
9 transactions.¹

10 31. Respondents allowed McGowan Enterprises to use accounts with their primary
11 wholesalers to purchase dangerous drugs for McGowan Enterprises and then "sold" or furnished
12 those drugs to McGowan Enterprises for at least three years. For example, McGowan Enterprises
13 "purchased" or obtained from Respondent JTM Infusion 2,408 dangerous drugs in 466
14 transactions during the period from March 9, 2010 through September 20, 2012.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Failure to Keep Records of Disposition Open for Inspection and to Keep Current**
17 **Inventory)**

18 32. Respondents are subject to disciplinary action under Code sections 4301(o), for
19 violating Code section 4081(a) in that they failed to keep records of the disposition of dangerous
20 drugs open for inspection or keep a current inventory as defined by California Code of
21 Regulations, title 16, section 1718 for the dangerous drugs it "sold" or furnished to McGowan
22 Enterprises from at least September 19, 2009 through September 20, 2012, as set forth in
23 paragraphs 26 through 31, which are incorporated herein by reference.

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26
27 ¹ Pedigree documents record the distribution route a drug has traveled since it left the
28 manufacturer.

1 43622 is placed on probation or until Pharmacy Permit Number PHY 43622 is reinstated if it is
2 revoked.

3 46. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
4 Number RPH 33107, issued to John Rossi, John Rossi shall be prohibited from serving as a
5 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
6 five years if Pharmacist License Number RPH 33107 is placed on probation or until Pharmacist
7 License Number RPH 33107 is reinstated if it is revoked.

8 **PRAYER**

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

11 1. Revoking or suspending Pharmacy Permit Number PHY 43622, issued to Thomas
12 McGowan, doing business as JTM Infusion;

13 2. Revoking or suspending Pharmacist License Number 33107, issued to John Rossi;

14 3. Prohibiting Thomas McGowan from serving as a manager, administrator, owner,
15 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
16 Number PHY 43622 is placed on probation or until Pharmacy Permit Number PHY 43622 is
17 reinstated if Pharmacy Permit Number PHY 43622 issued to Thomas McGowan, doing business
18 as JTM Infusion is revoked;

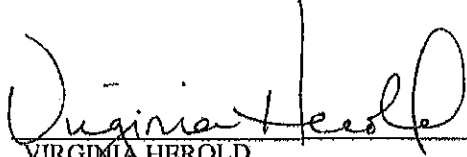
19 4. Prohibiting John Rossi from serving as a manager, administrator, owner, member,
20 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number
21 RPH 33107 is placed on probation or until Pharmacist License Number RPH 33107 is reinstated
22 if Pharmacist License Number RPH 33107 issued to John Rossi is revoked;

23 5. Ordering Thomas McGowan, doing business as JTM Infusion and John Rossi to pay
24 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
25 pursuant to Business and Professions Code section 125.3;

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6. 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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