

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

In the Matter of the Accusation Against:

Case No. 4940

**EXCELLERX INC.**  
512 Elmwood Avenue  
Sharon Hill, PA 19079

Non-Resident Pharmacy Permit No. NRP 714

**EXCELLERX INC.**  
2525 Horizon Lake Drive, Suite 101  
Memphis, TN 38133

Non-Resident Pharmacy Permit No. NRP 715

Respondent.

**DECISION AND ORDER**

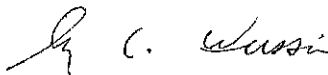
The attached Stipulated Settlement and Disciplinary Order for Public Repeval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 30, 2014.

It is so ORDERED on November 4, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
\_\_\_\_\_  
STAN C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
1300 I Street, Suite 125  
5 P.O. Box 944255  
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6 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4940

12 **EXCELLERX INC.**  
13 **512 Elmwood Avenue**  
14 **Sharon Hill, PA 19079**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPROVAL**

15 **Non-Resident Pharmacy Permit No. NRP  
714**

[Bus. & Prof. Code § 495]

16 **EXCELLERX INC.**  
17 **2525 Horizon Lake Drive, Suite 101**  
18 **Memphis TN 38133**

19 **Non-Resident Pharmacy Permit No. NRP  
715**

20 Respondents.

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

24 PARTIES

25 1. VIRGINIA HEROLD (Complainant) is the Executive Officer of the Board of  
26 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
27  
28

1 by Kamala D. Harris, Attorney General of the State of California, by Elena L. Almanzo, Deputy  
2 Attorney General.

3 2. Respondents ExcelleRx Inc., Sharon Hill, Pennsylvania and Memphis, Tennessee  
4 ("Respondents") are representing themselves in this proceeding and has chosen not to exercise  
5 their right to be represented by counsel.

6 3. On or about October 1, 2007, the Board of Pharmacy issued Non-Resident Pharmacy  
7 Permit Number NRP 714 to ExcelleRx Inc to do business at 512 Elmwood Avenue, Sharon Hill,  
8 PA, 19079 (Respondent). The Non-Resident Pharmacy Permit was in full force and effect at all  
9 times relevant to the charges brought herein and will expire on October 1, 2014, unless renewed.

10 4. On or about April 13, 2007, the Board of Pharmacy issued Non-Resident Pharmacy  
11 Permit Number NRP 715 to Omnicare Inc. and ExcelleRx Inc. to do business as ExcelleRX Inc.  
12 at 2525 Horizon Lake Drive, Suite 101, Memphis TN 38133 (Respondent). The Non-Resident  
13 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein  
14 and will expire on April 1, 2015, unless renewed.

#### 15 JURISDICTION

16 5. Accusation No. 4940 was filed before the Board of Pharmacy (Board), Department of  
17 Consumer Affairs and is currently pending against Respondents. The Accusation and all other  
18 statutorily required documents were properly served on Respondents on May 16, 2014.  
19 Respondents timely filed their Notice of Defense contesting the Accusation. A copy of  
20 Accusation No. 4940 is attached as exhibit A and incorporated herein by reference.

#### 21 ADVISEMENT AND WAIVERS

22 6. Respondents have carefully read, and understands the charges and allegations in  
23 Accusation No. 4940. Respondents have also carefully read, and understand the effects of this  
24 Stipulated Settlement and Disciplinary Order for Public Repeval.

25 7. Respondents are fully aware of their legal rights in this matter, including the right to a  
26 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
27 their own expense; the right to confront and cross-examine the witnesses against them; the right  
28 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to

1 compel the attendance of witnesses and the production of documents; the right to reconsideration  
2 and court review of an adverse decision; and all other rights accorded by the California  
3 Administrative Procedure Act and other applicable laws.

4 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
5 every right set forth above.

6 CULPABILITY

7 9. Respondents admit the truth of each and every charge and allegation in Accusation  
8 No. 4940.

9 10. Respondents agrees that their Non-Resident Pharmacy Permits are subject to  
10 discipline and they agree to be bound by the Disciplinary Order below.

11 CONTINGENCY

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

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

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

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

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

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Non-Resident Pharmacy Permit No. NRP 714 and Non-  
10 Resident Pharmacy Permit No. NPR 715 issued to Respondents ExcellerX Inc., Sharon Hill,  
11 Pennsylvania and Memphis, Tennessee (Respondents) shall, by way of letter from the Board's  
12 Executive Officer, be publicly reprovded. The letter shall be in the same form as the letter attached  
13 as Exhibit B to this stipulation.

14 IT IS FURTHER ORDERED that Respondent shall pay \$467 to the Board for its costs  
15 associated with the investigation and enforcement of this matter within (30) thirty days of the  
16 effective date of this decision.

17 **ACCEPTANCE**


18 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
19 stipulation and the effect it will have on my Non-Resident Pharmacy Permit No. NRP 714. I  
20 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and  
21 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

22  
23 DATED: 10-14-14   
24 EXCELLERX INC.  
25 SHARON HILL, PENNSYLVANIA  
26 Respondent

27 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
28 stipulation and the effect it will have on my Non-Resident Pharmacy Permit No. NRP 715. I

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enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 10-14-14   
EXCELLERX INC.  
MEMPHIS, TENNESEE  
Respondent

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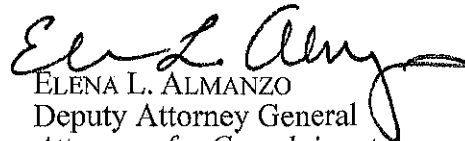
ENDORSEMENT

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

Dated: 10/20/2014

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General

  
ELENA L. ALMANZO  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 4940**



1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:  
13 **EXCELLERX INC.**  
14 **512 Elmwood Avenue**  
**Sharon Hill, PA 19079**  
15 **Non-Resident Pharmacy Permit No. NRP**  
16 **714**  
17 **EXCELLERX INC.**  
18 **2525 Horizon Lake Drive, Suite 101**  
**Memphis TN 38133**  
19 **Non-Resident Pharmacy Permit No. NRP**  
20 **715**  
21 Respondents.

Case No. 4940  
**ACCUSATION**

22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
26 2. On or about October 1, 2007, the Board of Pharmacy issued Non-Resident Pharmacy  
27 Permit Number NRP 714 to ExcellerRx Inc to do business at 512 Elmwood Avenue, Sharon Hill,  
28

1 PA, 19079 (Respondent). The Non-Resident Pharmacy Permit was in full force and effect at all  
2 times relevant to the charges brought herein and will expire on October 1, 2014, unless renewed.

3 3. On or about April 13, 2007, the Board of Pharmacy issued Non-Resident Pharmacy  
4 Permit Number NRP 715 to Omnicare Inc. and ExcelleRx Inc. to do business as ExcelleRX Inc.  
5 at 2525 Horizon Lake Drive, Suite 101, Memphis TN 38133 (Respondent). The Non-Resident  
6 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein  
7 and will expire on April 1, 2015, unless renewed.

#### 8 JURISDICTION

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

12 5. Section 4300 of the Code states:

13 "(a) Every license issued may be suspended or revoked.

14 "(b) The board shall discipline the holder of any license issued by the  
15 board, whose default has been entered or whose case has been heard by the board and  
found guilty, by any of the following methods:

16 "(1) Suspending judgment.

17 "(2) Placing him or her upon probation.

18 "(3) Suspending his or her right to practice for a period not exceeding one  
19 year.

20 "(4) Revoking his or her license.

21 "(5) Taking any other action in relation to disciplining him or her as the  
board in its discretion may deem proper.

22 "(c) The board may refuse a license to any applicant guilty of  
23 unprofessional conduct. The board may, in its sole discretion, issue a probationary  
24 license to any applicant for a license who is guilty of unprofessional conduct and who  
has met all other requirements for licensure. The board may issue the license subject  
25 to any terms or conditions not contrary to public policy, including, but not limited to,  
the following:

26 "(1) Medical or psychiatric evaluation.

27 "(2) Continuing medical or psychiatric treatment.

28 "(3) Restriction of type or circumstances of practice.

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"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. Section 118 of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

7. On or about October 2, 2007, the Respondents' parent company, ExcellerX, Inc., entered into a consent decree with the Drug Enforcement Administration (DEA). This consent decree was related to Respondents dispensing approximately 7,000 schedule II controlled substances to hospice patients without meeting the emergency authorization procedure established under 21 CFR section 290.10. Under the consent decree, Respondents neither admitted nor denied liability. Respondents agreed to pay a civil penalty in the amount of \$540,000.

1 CAUSE FOR DISCIPLINE

2 (Out of State Discipline)

3 8. Respondents are subject to discipline under Code section 4301 (n) in that effective  
4 September 13, 2011, pursuant to a Consent Order, attached hereto as **Exhibit A**, in a matter titled  
5 *In the Matter of Excellerx*, the Tennessee State Board of Pharmacy placed Respondents Pharmacy  
6 license on probation for a period of five years under terms and conditions of probation including  
7 compliance with inspections among other conditions.

8 9. Respondents are subject to discipline under Code section 4301 (n) in that effective  
9 November 5, 2012, pursuant to a Consent Agreement, attached hereto as **Exhibit B**, in a matter  
10 titled *In re Excellerx*, the State of Maine, found that ExcellerX failed to disclose disciplinary  
11 action by the FDA on their request for renewal of licensure and imposed a warning and a civil  
12 penalty in the amount of \$2000.

13 10. Respondents are subject to discipline under Code section 4301 (n) in that effective  
14 December 13, 2013, pursuant to a Decision and Order, attached hereto as **Exhibit C**, in a matter  
15 entitled *In the Matter of the Indiana Non-Resident Pharmacy Licenses of Excellence PA d/b/a*  
16 *Hospice Pharmacia License Number 64000693A, Excellerx license number 64000385A, and*  
17 *Excellerx license number 64000985A*, before the Indiana Board of Pharmacy; the Indiana Board  
18 issued a letter of reprimand and fined Respondents two hundred and fifty dollars (\$250) for  
19 failure to disclose the consent decree entered into with the FDA on their application for renewal.

20 PRAYER

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

23 1. Revoking or suspending Non-Resident Pharmacy Permit Number NRP 714, issued to  
24 ExcellerX Inc. do business at 512 Elmwood Avenue, Sharon Hill, PA 19079;

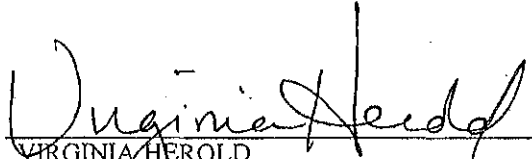
25 2. Revoking or suspending Non-Resident Pharmacy Permit Number NRP 715, issued to  
26 ExcellerX Inc. do business at 2525 Horizon Lake Drive, Suite 101, Memphis TN 38133;

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3. Ordering ExcelleRX to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/3/14



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

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**Exhibit B**

**Letter of Public Repeal in Case No. 4940**



**California State Board of Pharmacy**  
1625 N. Market Blvd, Suite N219, Sacramento, CA 95834  
Phone (916) 574-7900  
Fax (916) 574-8618  
www.pharmacy.ca.gov

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

October 30, 2014

ExcelleRx, Inc.  
512 Elmwood Avenue  
Sharon Hill, PA 19079

ExcelleRx, Inc.  
2525 Horizon Lake Drive, Suite 101  
Memphis, TN 38133

Re: **LETTER OF PUBLIC REPROVAL**  
**In the Matter of the Accusation Against:**  
**ExcelleRx Inc., Non-Resident Pharmacy Permit Nos. NRP 714 and NRP 715**

Dear ExcelleRx, Inc.:

On May 3, 2014, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Non-Resident Pharmacy Permits. The Accusation alleged that you engaged in unprofessional conduct under Business and Professions Code section 4301(n) based upon out of state discipline.

Taking into consideration that no admissions were made in the underlying action, you change procedures for filing prescriptions, you notified the Board of the discipline by the states of Tennessee, Maine, and Indiana, and that there are other mitigating circumstances in this case that support the determination that you are safe to practice as a non-resident pharmacy, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproof.

Sincerely,

A handwritten signature in cursive script that reads "Virginia K. Herold".

**VIRGINIA K. HEROLD**  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs