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

In the Matter of the Accusation Against:

Case No. 5119

**FOSTER PHARMACEUTICALS
2603 Main Street, Suite 800
Irvine, CA 92614**

DEFAULT DECISION AND ORDER

Wholesale Permit No. WLS 6248

[Gov. Code, §11520]

**GEORGE ANTHONY CARILLO
P.O. Box 2408 Fullerton, CA 92837**

**Designated Representative License No.
EXC 22249**

Respondents.

FINDINGS OF FACT

1. On or about September 5, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5119 against Foster Pharmaceuticals (Respondent Foster Pharmaceuticals) and George Anthony Carillo (Respondent George Carillo) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

1
2 2. On or about July 16, 2013, the Board of Pharmacy (Board) issued Wholesale Permit
3 No. WLS 6248 to Respondent Foster Pharmaceuticals. The Wholesale Permit was in full force
4 and effect at all times relevant to the charges brought in Accusation No. 5119 and will expire on
5 July 1, 2015, unless renewed.

6 3. On or about April 24, 2013, the Board issued Designated Representative License
7 Number EXC 22249 to George Carillo. The Designated Representative License was in full force
8 and effect at all times relevant to the charges brought in Accusation No. 5119 and will expire on
9 April 1, 2015, unless renewed.

10 4. On or about September 12, 2014, Respondent Foster Pharmaceuticals was served by
11 Certified and First Class Mail copies of the Accusation No. 5119, Statement to Respondent,
12 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
13 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business
14 and Professions Code section 4100, is required to be reported and maintained with the Board.
15 Respondent Foster Pharmaceutical's address of record was and is: 2603 Main Street, Suite 800,
16 Irvine, CA 92614.

17 5. On or about September 12, 2014, Respondent George Carillo was served by Certified
18 and First Class Mail copies of the Accusation No. 5119, Statement to Respondent, Notice of
19 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
20 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
21 Professions Code section 4100, is required to be reported and maintained with the Board.
22 Respondent George Carillo's address of record was and is: P.O. Box 2408, Fullerton, CA 92837.

23 6. Service of the Accusation was effective as a matter of law under the provisions of
24 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
25 124.

26 7. On or about September 23, 2014, the aforementioned documents served on
27 Respondent Foster Pharmaceuticals were returned by the U.S. Postal Service marked "Unable to
28 Forward."

1 8. On or about September 22, 2014, Respondent George Carillo executed the Certified
2 Mail Return Receipt indicating that he had received the aforementioned documents.

3 9. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the respondent
5 files a notice of defense, and the notice shall be deemed a specific denial of all parts
6 of the accusation not expressly admitted. Failure to file a notice of defense shall
7 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
8 may nevertheless grant a hearing.

9 10. Respondents failed to file a Notice of Defense within 15 days after service upon them
10 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
11 5119.

12 11. California Government Code section 11520 states, in pertinent part:

13 (a) If the respondent either fails to file a notice of defense or to appear at the
14 hearing, the agency may take action based upon the respondent's express admissions
15 or upon other evidence and affidavits may be used as evidence without any notice to
16 respondent.

17 12. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondents are in default. The Board will take action without further hearing and, based on the
19 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on
21 file at the Board's offices regarding the allegations contained in Accusation No. 5119, finds that
22 the charges and allegations in Accusation No. 5119, are separately and severally, found to be true
23 and correct by clear and convincing evidence.

24 13. Taking official notice of its own internal records, pursuant to Business and
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
26 and Enforcement is \$2,950.00 as of October 7, 2014.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Foster Pharmaceuticals has
subjected its Wholesale Permit No. WLS 6248 and Respondent George Carillo has subjected his
Designated Representative License No. EXC 22249 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

1 3. The Board of Pharmacy is authorized to revoke Respondent Foster Pharmaceutical's
2 Wholesale Permit and Respondent George Carillo's Designated Representative License based
3 upon the following violations alleged in the Accusation which are supported by the evidence
4 contained in the Default Decision Evidence Packet in this case:

5 a. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
7 drugs, including drugs used for the treatment of HIV and AIDS from an unlicensed entity, SD
8 Trading, an entity masquerading as JD Pharmaceutical Wholesale, Inc.

9 b. Respondents are subject to disciplinary action under Code sections 4301(o), for
10 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
11 disposition of dangerous drugs open for inspection or keep a current inventory as defined by
12 California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs
13 used for the treatment of HIV and AIDS, it sold to pharmacies from July 24, 2013 through August
14 1, 2013.

15 c. Respondents are subject to disciplinary action under Code section 4301(o), for
16 violating Code sections 4105 (a) and (c), in that Respondents failed to retain records for the
17 dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold
18 from July 24, 2013 through August 1, 2013.

19 d. Respondents are subject to disciplinary action under Code section 4301(q), for
20 subverting an investigation of the Board in that they made misrepresentations to the Board
21 Inspector about their purchase of dangerous drugs, including drugs used for the treatment of HIV
22 and AIDS drugs on July 6 and August 2, 2013 and did not produce the complete records of those
23 drug transactions even though they represented that they had access to them.

24 e. Respondents are subject to disciplinary action under Code section 4301 for
25 unprofessional conduct in that they engaged in the activities described above.

1 70959187.DOC/DOJ Matter ID:SD2014706773

2 Attachment:
3 Exhibit A: Accusation
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5119

12 **FOSTER PHARMACEUTICALS**
13 **2603 Main Street, Suite 800**
14 **Irvine, CA 92614**

A C C U S A T I O N

15 **Wholesale Permit No. WLS 6248**

16 **GEORGE ANTHONY CARILLO**
17 **P.O. Box 2408**
18 **Fullerton, CA 92837**

19 **Designated Representative License No**
20 **EXC 22249**

Respondents.

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 July 16, 2013, the Board of Pharmacy issued Wholesale Permit Number
26 WLS 6248 to Foster Pharmaceuticals (Respondent Foster Pharmaceuticals). The Wholesale
27 Permit was in full force and effect at all times relevant to the charges brought herein and will
28 expire on July 1, 2015, unless renewed.

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13. Section 4105, subdivisions (a) and (c) of the Code state:

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

....

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

14. 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.

15. Section 4163(a) of the Code states:

A manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous drug or dangerous device to an unauthorized person.

16. 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.

....

17. 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:

....

(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.

1
2 (q) Engaging in any conduct that subverts or attempts to subvert an
3 investigation of the board.
4

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

9 **COST RECOVERY**

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

14 **DRUGS**

15 20. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
16 Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complera,
17 epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread
18 and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022
19 and possess a high resale and street dollar value.

20 **FACTUAL ALLEGATIONS**

21 21. Since July 16, 2013 and at all times mentioned herein, Respondent George Carillo
22 was the Designated Representative-in-Charge (DRIC) of Respondent Foster Pharmaceuticals.

23 22. At all times mentioned herein, ST Trading was an entity that was not licensed by the
24 Board, had no premises or telephone numbers and was non-existent. On July 16, 2013,
25 Respondents purchased dangerous drugs, including drugs used for the treatment of HIV and AIDS
26 drugs at a total cost of \$1,146,917.52 from ST Trading.

27 23. On July 16, 2013, Respondents purchased HIV and AIDS drugs in the amount of
28 \$1,735,213.10. On August 2, 2013, Respondents purchased dangerous drugs including drugs
used for the treatment of HIV and AIDS as described in paragraph 20, above, in the amount of

1 \$369,589 from an unknown entity or persons. Respondents' records reflect that JD
2 Pharmaceutical Wholesaler Inc. sold those drugs to Respondents. However, JD Pharmaceutical
3 Wholesaler Inc. did not sell those drugs to Respondents.

4 24. During an inspection on August 7, 2013, Respondent George Carillo informed the
5 Board inspector that Respondents purchased dangerous drugs from JD Pharmaceutical Wholesaler
6 Inc., but on August 9, 2013, Respondent George Carillo informed the Board inspector that
7 Respondents had not purchased drugs from JD Pharmaceutical Wholesaler Inc., explaining that
8 the sales invoices were actually "drug proposals." Respondents did not produce any records of
9 the purported transactions with JD Pharmaceutical Wholesaler Inc., other than two invoices, or
10 any other records reflecting the transactions between the entity or person who actually sold them
11 the dangerous drugs listed on the JD Pharmaceutical Wholesaler Inc. invoices.

12 25. From July 24, 2013 through August 1, 2013, Respondents did not maintain all the
13 records for the acquisition of dangerous drugs purchased for \$2,911,844.62 and the records of
14 disposition of those dangerous drugs, which Respondent sold for \$656,585.75.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Purchasing Drugs from Unlicensed Entities)**

17 26. Respondents are subject to disciplinary action under Code section 4301(o), for
18 violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
19 drugs, including drugs used for the treatment of HIV and AIDS from an unlicensed entity, SD
20 Trading, an entity masquerading as JD Pharmaceutical Wholesale, Inc., as set forth in paragraphs
21 21 through 25 above, which are incorporated herein by reference.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Failure to Keep Records of Acquisition and Disposition Open for Inspection**
24 **and to Keep Current Inventory)**

25 27. Respondents are subject to disciplinary action under Code sections 4301(o), for
26 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
27 disposition of dangerous drugs open for inspection or keep a current inventory as defined by
28 California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs

1 used for the treatment of HIV and AIDS, it sold to pharmacies from July 24, 2013 through August
2 1, 2013, as set forth in paragraphs 21 through 25, which are incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 28. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating Code sections 4105 (a) and (c), in that Respondents failed to retain records for the
7 dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold
8 from July 24, 2013 through August 1, 2013, as set forth in paragraphs 21 through 25, which are
9 incorporated herein by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Subverting an Investigation)**

12 29. Respondents are subject to disciplinary action under Code section 4301(q), for
13 subverting an investigation of the Board in that they made misrepresentations to the Board
14 Inspector about their purchase of dangerous drugs, including drugs used for the treatment of HIV
15 and AIDS drugs on July 6 and August 2, 2013 and did not produce the complete records of those
16 drug transactions even though they represented that they had access to them, as set forth in
17 paragraphs 21 through 25, which are incorporated herein by reference.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 30. Respondents are subject to disciplinary action under Code section 4301 for
21 unprofessional conduct in that they engaged in the activities described in paragraphs 21 through
22 25 above, which are incorporated herein by reference.

23 **OTHER MATTERS**

24 31. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit
25 Number WLS 6248, issued to Foster Pharmaceuticals and George Anthony Carillo while acting
26 as the manager, administrator, owner, member, officer, director, associate, or partner of Foster
27 Pharmaceuticals had knowledge of or knowingly participated in any conduct for which
28 Wholesaler Permit Number WLS 6248 was revoked, suspended or placed on probation, George

1 Anthony Carillo shall be prohibited from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for five years if Wholesaler Permit Number
3 WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248 is reinstated if
4 it is revoked.

5 32. Pursuant to Code section 4307, if discipline is imposed on Designated
6 Representative License No. EXC 22249 issued to George Anthony Carillo, George Anthony
7 Carillo shall be prohibited from serving as a manager, administrator, owner, member, officer,
8 director, associate, or partner of a licensee for five years if Designated Representative License
9 Number EXC 22249 is placed on probation or until Designated Representative License Number
10 EXC 22249 is reinstated if it is revoked.

11 **PRAYER**

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

14 1. Revoking or suspending Wholesale Permit Number WLS 6248, issued to Foster
15 Pharmaceuticals;

16 2. Revoking or suspending Designated Representative License Number EXC 22249,
17 issued to George Anthony Carillo;

18 3. Prohibiting George Anthony Carillo from serving as a manager, administrator,
19 owner, member, officer, director, associate, or partner of a licensee for five years if Wholesaler
20 Permit Number WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248
21 is reinstated if Wholesaler Permit Number WLS 6248 issued to Foster Pharmaceuticals is
22 revoked;

23 4. Prohibiting George Anthony Carillo from serving as a manager, administrator,
24 owner, member, officer, director, associate, or partner of a licensee for five years if Designated
25 Representative License Number EXC 22249 is placed on probation or until Designated
26 Representative License Number EXC 22249 is reinstated if Designated Representative License
27 Number EXC 22249 issued to George Anthony Carillo is revoked;

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