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

10 In the Matter of the Accusation Against:

Case No. 4223

11 **ADVANCED RX INC. DBA ALVARADO**
12 **DISCOUNT PHARMACY**
13 **1107 S. Alvarado Street #103**
Los Angeles, CA 90006
14 **Original Permit No. PHY 49031**
Sterile Compounding License No. LSC
15 **99599**

A C C U S A T I O N

16 Respondents.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 11, 2008, the Board of Pharmacy issued Original Permit Number
22 PHY 49031 to Advanced RX Inc. dba Alvarado Discount Pharmacy (Respondent). The Original
23 Permit was in full force and effect at all times relevant to the charges brought herein and will
24 expire on April 1, 2014, unless renewed.

25 3. On or about May 12, 2010, the Board of Pharmacy issued Sterile Compounding
26 Permit Number LSC 99599 to Advanced RX Inc. dba Alvarado Discount Pharmacy. The Sterile
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1 Compounding Permit was in full force and effect at all times relevant to the charges brought
2 herein and was Discontinued of Business effective January 1, 2013.

3 **JURISDICTION**

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

7 5. Section 4300.1 states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 4022 of the Code defines the term "dangerous drug" as "any drug . . . unsafe
15 for self-use in humans or animals, and includes the following:

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

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

21 7. Section 4040, subdivision (a) of the Code states:

22 "(a) 'Prescription' means an oral, written, or electronic transmission order that is both of the
23 following:

24 (1) Given individually for the person or persons for whom ordered that includes all of the
25 following:

26 (A) The name or names and address of the patient or patients.

27 (B) The name and quantity of the drug or device prescribed and the directions for use.

28 (C) The date of issue.

1 (D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and
2 telephone number of the prescriber, his or her license classification, and his or her federal registry
3 number, if a controlled substance is prescribed.

4 “(E) A legible, clear notice of the condition or purpose for which the drug is being
5 prescribed, if requested by the patient or patients.

6 “(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife,
7 nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to
8 Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug
9 order pursuant to either Section 4052.1 or 4052.2.

10 “(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic
11 doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51,
12 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or
13 naturopathic doctor licensed in this state, or pursuant to either Section 4052.1 or 4052.2 by a
14 pharmacist licensed in this state.”

15 8. Section 4300 of the Code states:

16 “(a) Every license issued may be suspended or revoked.

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

20 (1) Suspending judgment.

21 (2) Placing him or her upon probation.

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

23 (4) Revoking his or her license.

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

26 “

27 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
28 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board

1 shall have all the powers granted therein. The action shall be final, except that the propriety of
2 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
3 Civil Procedure.”

4 9. Section 4301 of the Code states:

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

8 "

9 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
10 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
11 whether the act is a felony or misdemeanor or not.

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

14 "

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of or conspiring to violate any provision or term of this chapter or of the applicable
17 federal and state laws and regulations governing pharmacy, including regulations established by
18 the board or by any other state or federal regulatory agency.

19 "(p) Actions or conduct that would have warranted denial of a license.

20 **REASONABLE COSTS**

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

25 **STATEMENT OF FACTS**

26 11. From on or about April 12, 2008, to February 14, 2009, Steve Sepanian was the
27 Pharmacist-in-Charge (PIC) of Respondent Alvarado Discount Pharmacy.

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1 12. From on or about February 16, 2009 to July 15, 2009, Leslie Domeyer was the PIC of
2 Respondent Alvarado Discount Pharmacy.

3 13. From on or about August 17, 2009 through the present, Minh Hoa Ma has been the
4 PIC of Respondent Alvarado Discount Pharmacy.

5 14. On or about December 30, 2010, the Board received a written complaint from
6 attorney Natalia Bautista alleging Respondent of fraudulently billing her client, the Laundry and
7 Dry Cleaning Workers' Local No. 52 Health & Welfare Trust (Trust). Ms. Bautista stated in the
8 complaint that the Trust was a party to an agreement with Express Scripts Inc. (ESI) pursuant to
9 which ESI administers the prescription drug benefit plan on behalf of the Trust. According to the
10 complaint, ESI conducted audits of Alvarado based on a suspiciously high rate of compounding
11 by Respondent for the time period of May 2008 to March 2009. The ESI report addressed,
12 among other things, the continuous use of Hyaluronic Acid Sodium Powder in compounds made
13 by Respondent and stated that it appeared Respondent attempted to bill compounds which did not
14 need to be compounded using Hyaluronic Acid to justify the amount of the claim billed.

15 15. A board inspector conducted an investigation of Respondent Alvarado Discount
16 Pharmacy in which he reviewed Respondent's 'compounding ingredient worksheets' (provided
17 by Respondent upon ESI's request for ingredients within compounds), scanned prescription
18 images, and/or a compound calculation worksheet (an ESI generated spreadsheet). The board
19 inspector then extracted information from the 'compound ingredient worksheet' such as the RX#,
20 drug, and dispensed date on the claims involving the ingredient Hyaluronic Acid, then reviewed
21 the compounding logs for the subsequent RX#, drug, and dispensed date to determine if they
22 matched. Upon confirming a match, the board inspector retrieved the lot# recorded in the
23 compounding logs in association with the RX# and drug. With the lot#, the inspector then
24 reviewed the logged compounding formula worksheets for the compounded drug and
25 corresponding lot #.

26 16. The board inspector's investigation revealed that the following 130 prescription
27 claims submitted by Respondent to ESI listed Hyaluronic Acid as an ingredient in the compound
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1 when, based upon the logged compounding formula worksheets, Hyaluronic Acid was not an
 2 ingredient utilized in the compounded drug:

Compounded Drug	RX #	Dispensed Date
Amlodipine 10mg / Benazepril 22mg capsules	26021	1/29/2009
	7236	6/28/2008
	9370	7/31/2008
	9499	8/1/2008
	9540	8/2/2008
	10808	8/22/2008
	12536	9/15/2008
Aspirin 81mg / Plavix 4.5mg capsules	14444	10/3/2008
	6936	6/23/2008
	13734	9/25/2008
	13843	9/26/2008
Aveeno Anti-Itch cream	24686	1/16/2009
	27605	2/10/2009
	28966	2/20/2009
	32232	3/20/2009
	34162	4/9/2009
	35364	4/20/2009
	35787	4/27/2009
	36352	5/1/2009
Azithromycin 250mg/15ml suspension	38244	5/18/2009
Belladonna Alkaloids / Phenobarbital /		
Ranitidine liquid	12441	9/13/2008
	16230	10/24/2008
	19826	11/26/2008
	20735	12/6/2008
	21606	12/13/2008
	24168	1/12/2009
	24269	1/13/2009
	28094	2/12/2009
	29055	2/21/2009
	31663	3/16/2009
	38357	5/19/2009
Benzoyl Peroxide / Clindamycin gel	11853	9/6/2008
	23130	1/2/2009
	37355	5/8/2009
Chromium Picolinate 200mcg / Creon-20		
capsules	10473	8/19/2008
	14301	10/1/2008
	16409	10/25/2008
	18823	11/17/2008
	19889	11/26/2008
	34128	4/9/2009

		37985	5/14/2009
1	Daniel's Solution suspension	7270	6/28/2008
2	Dibucaine / Triamcinolone cream	20819	12/6/2008
	Diphenoxylate / Atropine / Ranitidine liquid	33123	3/31/2009
3		37672	5/12/2009
		38598	5/21/2009
4		14269	10/1/2008
	Guafensein / Cetirizine liquid	20036	11/29/2008
5	Nystatin / Zinc Oxide cream	24264	1/13/2009
6	Phendimetrazine 35mg / Liothyronine 2.5mcg capsules	10472	8/19/2008
		25200	1/21/2009
7	Progesterone 5% cream	10444	8/18/2008
		8967	7/25/2008
8		9143	7/28/2008
		9218	7/29/2008
9		11835	9/6/2008
		13017	9/19/2008
10		13384	9/22/2008
		13612	9/25/2008
11		20580	12/4/2008
		20643	12/4/2008
12		20962	12/8/2008
		21593	12/13/2008
13		24383	1/13/2009
		25291	1/22/2009
14		25986	1/28/2009
		26161	1/30/2009
15		26484	1/31/2009
16		27631	2/10/2009
		29903	2/27/2009
17		31634	3/14/2009
		33736	4/6/2009
18		34206	4/10/2009
		36197	4/29/2009
19		36295	4/30/2009
	Promethazine 1.15mg / Cetirizine 0.08mg / DM 2.76mg liquid	38500	5/20/2009
20		40270	6/9/2009
21		16448	10/27/2008
	Revitalizing Eye cream	33171	3/31/2009
22		8828	7/22/2008
		9421	7/31/2008
23		10492	8/19/2008
		11109	8/27/2008
24		12348	9/12/2008
		14235	10/1/2008
25		15009	10/8/2008
		15803	10/20/2008
26		17153	11/3/2008
	Sucralfate 500mg / Ranitidine 75mg capsules	17896	11/10/2008
27		19215	11/19/2008
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		26685	2/2/2009
		26959	2/4/2009
		30965	3/9/2009
		31080	3/9/2009
		31161	3/10/2009
		37571	5/11/2009
		38388	5/20/2009
		39457	6/1/2009
		40286	6/9/2009
		17155	11/3/2008
		20020	11/28/2008
		25493	1/24/2009
		32853	3/26/2009
	Super Anti-Oxidant cream	33719	4/4/2009
		8336	7/15/2008
		9628	8/4/2008
		12688	9/16/2008
		14557	10/4/2008
		15871	10/20/2008
		16384	10/25/2008
		16984	11/1/2008
		20641	12/4/2008
		21951	12/17/2008
		23840	1/8/2009
		25260	1/22/2009
		26865	2/4/2009
		28350	2/16/2009
		29647	2/25/2009
		30249	3/3/2009
		30720	3/7/2009
		30873	3/9/2009
		31383	3/12/2009
		38093	5/16/2009
	Tramadol 25mg / Dextromethorphan 10mg capsules	38176	5/16/2009
		38380	5/20/2009
	Vitamin D 600IU / Magnesium 200mg /ml liquid	19244	11/20/2008
		25608	1/26/2009
	Ketoprofen / Cyclobenzaprine / Ketamine / Gabapentin / Ibuprofen / Hyaluronic Acid gel	10958	8/25/2008
		12616	9/15/2008
	Super Anti-Oxidant cream	12945	9/18/2008

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

17. Respondent Alvarado Discount Pharmacy is subject to disciplinary action under section 4301, subdivision (f) for committing acts of moral turpitude, dishonesty, fraud, deceit or corruption. Specifically, from about May 2008 to December 2009, Respondent fraudulently

1 submitted prescription claims to ESI on compounded medications with an ingredient (Hyaluronic
2 Acid) which was not used in the compound. Approximately 130 prescriptions were furnished
3 without the ingredient Hyaluronic Acid in the compound (as shown by the 'compounding formula
4 worksheets') but fraudulently claimed (billed) as if the ingredient was included in the compound
5 (as shown by the 'compounding ingredient worksheets' provided by Respondent when requested
6 by ESI). Complainant refers to and incorporates all the allegations contained in paragraphs 11
7 through 16 above, as though set forth fully.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Knowingly Making a False Document)**

10 18. Respondent Alvarado Discount Pharmacy is subject to disciplinary action under
11 section 4301, subdivision (g) for knowingly making or signing any certificate or other document
12 that falsely represents the existence or non-existence of a state of facts. Specifically, from about
13 May 2008 to December 2009, Respondent fraudulently submitted prescription claims to ESI on
14 compounded medications with an ingredient (Hyaluronic Acid) which was not used in the
15 compound. Approximately 130 prescriptions were furnished without the ingredient Hyaluronic
16 Acid in the compound (as shown by the 'compounding formula worksheets') but fraudulently
17 claimed (billed) as if the ingredient was included in the compound (as shown by the
18 'compounding ingredient worksheets' provided by Respondent when requested by ESI).
19 Complainant refers to and incorporates all the allegations contained in paragraphs 11 through 16
20 above, as though set forth fully.

21 **DISCIPLINE CONSIDERATIONS**

22 19. To determine the degree of discipline, if any, to be imposed on Respondent Alvarado
23 Discount Pharmacy, Complainant alleges that on or about September 27, 2010, in a prior action,
24 the Board issued Citation Number C1 2009 42987 and ordered Respondent to pay a total of
25 \$4,500.00 in fines. That Citation is now final and is incorporated by reference as if fully set forth.
26 The fines were imposed for the following:

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1 a. Violation of California Code of Regulations, title 16, section 1761, subdivision (a),
2 which prohibits pharmacists from compounding or dispensing any prescription which contains
3 any significant error or omission.

4 b. Violation of Code section 4040, subdivisions (a)(1)(B), pursuant to California Code
5 of Regulations, title 16, section 1717, subdivision (c), in conjunction with Code section 4071,
6 which requires promptly upon receipt of an orally transmitted prescription, that the pharmacist
7 reduce it to writing, initial it, and identify it as an orally transmitted prescription. All orally
8 transmitted prescriptions shall be received and transcribed (with the name and quantity of the
9 drug prescribed and directions for use) by a pharmacist prior to compounding, filling, dispensing,
10 or furnishing. The furnisher shall determine the person who transmitted the prescription is
11 authorized to do so and record the name of the authorized agent who transmitted the order.

12 c. Violation of Code section 4052.2, subdivision (a)(4), which requires that initiation or
13 adjustment of the drug regimen of a patient be pursuant to a specific written order or
14 authorization made by the individual patient's treating prescriber in accordance with the policies,
15 procedures, or protocols of the physician.

16 d. Violation of Code section 4342, subdivision (a), which prohibits the sale of
17 pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality
18 and strength.

19 e. Violation of California Code of Regulations, title 16, section 1714, subdivision (g),
20 which requires the pharmacy maintain a readily accessible restroom.

21 **PRAYER**

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

24 1. Revoking or suspending Original Permit Number PHY 49031, issued to Advanced
25 RX Inc. dba Alvarado Discount Pharmacy;

26 2. Ordering Advanced RX Inc. dba Alvarado Discount Pharmacy to pay the Board of
27 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code
28 section 125.3; and

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

DATED: _____

2/18/14



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

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