



California State Board of Pharmacy  
1625 N. Market Blvd, 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.

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>McGowan Enterprises Inc. / Acute Care Pharmaceuticals</u>	Case No. <u>4024</u>
Address of Record: <u>1225 World Trade Dr. Ste. A-E</u> <u>San Diego, CA 92128</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. 4024, I hereby request to surrender my premises license, License No. WLS 33320. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become part of the premises license history with the Board.

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

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

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Thomas M. Mc...  
Applicant's Signature

1-3-19  
Date

Angelika...  
Executive Officer's Approval  
Interim

1/17/19  
Date

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

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

In the Matter of the Accusation Against:

**MCGOWAN ENTERPRISES INC., DBA  
MCGOWAN ENTERPRISES, INC./  
ACUTE CARE PHARMACEUTICALS  
12225 World Trade Drive, Suites A,B,C,D, E  
San Diego, CA 92128**

**Wholesaler Permit No. WLS 3336**

**and**

**THOMAS MICHAEL MCGOWAN  
12225 World Trade Center Drive, Suite A  
San Diego, CA 92128**

**Designated Representative No. EXC 13963**

Respondents.

Case No. 4624

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER AS TO  
MCGOWAN ENTERPRISES INC./  
ACUTE CARE PHARMACEUTICALS  
ONLY**

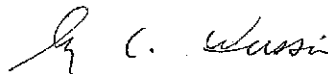
**DECISION AND ORDER**

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

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 MORGAN MALEK  
Deputy Attorney General  
4 State Bar No. 223382  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2643  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4624

11 **MCGOWAN ENTERPRISES INC., DBA**  
12 **MCGOWAN ENTERPRISES INC./**  
13 **ACUTE CARE PHARMACEUTICALS**  
14 **12225 World Trade Drive, Suites A, B, C, D,**  
**E**  
**San Diego, CA 92128**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO**  
**MCGOWAN ENTERPRISES INC./**  
**ACUTE CARE PHARMACEUTICALS**  
**ONLY**

15 **Wholesaler Permit No. WLS 3336**

16 **and**

17 **THOMAS MICHAEL MCGOWAN**  
18 **12225 World Trade Center Drive, Suite A**  
**San Diego, CA 92128**

19 **Designated Representative No. EXC 13963**

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 Pharmacy.  
26 She brought this action solely in her official capacity and is represented in this matter by Kamala  
27  
28

1 D. Harris, Attorney General of the State of California, by Morgan Malek, Deputy Attorney  
2 General.

3 2. Respondent McGowan Enterprises Inc. dba McGowan Enterprises Inc./Acute Care  
4 Pharmaceuticals ("Respondent") is represented in this proceeding by attorney Earl M. Pott, Esq.,  
5 whose address is:

6 KLINEDINST PC  
7 501 W. Broadway, Suite 600  
8 San Diego, CA 92101

9 3. On or about September 2, 1997, the Board of Pharmacy issued Wholesaler Permit No.  
10 WLS 3336 to the Respondent owner. The Wholesaler Permit was in full force and effect at all  
11 times relevant to the charges brought in Accusation No. 4624 and will expire on September 1,  
12 2015, unless renewed.

### 13 JURISDICTION

14 4. Accusation No. 4624 was filed before the Board of Pharmacy (Board) , Department  
15 of Consumer Affairs, and is currently pending against the Respondent. The Accusation and all  
16 other statutorily required documents were properly served on the Respondent on February 27,  
17 2014. Respondent timely filed its Notice of Defense contesting the Accusation.

18 5. A copy of Accusation No. 4624 is attached as exhibit A and incorporated herein by  
19 reference.

### 20 ADVISEMENT AND WAIVERS

21 6. Respondent has carefully read, fully discussed with counsel, and understands the  
22 charges and allegations in Accusation No. 4624. Respondent has also carefully read, fully  
23 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
24 Order.

25 7. Respondent is fully aware of its 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 its own expense; the right to confront and cross-examine the witnesses against them; the right to  
28 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel

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

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

6 **CULPABILITY**

7 9. Respondent admits the truth of each and every charge and allegation in Accusation  
8 No. 4624.

9 10. Respondent agrees that its Wholesaler Permit is subject to discipline and they agree to  
10 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11 **CONTINGENCY**

12 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
13 understands and agrees 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 or its counsel. By signing the stipulation, Respondent understands  
16 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the  
17 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its  
18 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
19 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
20 and the Board shall not be disqualified from further action by having considered this matter.

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

24 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
28

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 **IT IS HEREBY ORDERED** that Wholesaler Permit No. WLS 3336 issued to Respondent  
8 McGowan Enterprises Inc. dba McGowan Enterprises Inc./Acute Care Pharmaceuticals is  
9 revoked. However, the revocation is stayed and Respondent is placed on probation for five (5)  
10 years on the following terms and conditions.

11 **1. Obey All Laws**

12 Respondent owner shall obey all state and federal laws and regulations.

13 Respondent owner shall report any of the following occurrences to the board, in writing,  
14 within seventy-two (72) hours of such occurrence:

- 15  an arrest or issuance of a criminal complaint for violation of any provision of the  
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
17 substances laws
- 18  an arrest or issuance of a criminal complaint for violation of any state or federal law
- 19  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
20 criminal complaint, information or indictment
- 21  a conviction of any crime
- 22  discipline, citation, or other administrative action filed by any state or federal agency  
23 which involves Respondent owner's wholesale permit or which is related to the  
24 practice of pharmacy or the manufacturing, obtaining, handling or distribution or  
25 billing or charging for of any drug, device or controlled substance.

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

27 **2. Report to the Board**

28 Respondent owner shall report to the board quarterly, on a schedule as directed by the board

1 or its designee. The report shall be made either in person or in writing, as directed. Among other  
2 requirements, Respondent owner shall state in each report under penalty of perjury whether there  
3 has been compliance with all the terms and conditions of probation. Failure to submit timely  
4 reports in a form as directed shall be considered a violation of probation. Any period(s) of  
5 delinquency in submission of reports as directed may be added to the total period of probation.  
6 Moreover, if the final probation report is not made as directed, probation shall be automatically  
7 extended until such time as the final report is made and accepted by the board.

8 **3. Interview with the Board**

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

15 **4. Cooperate with Board Staff**

16 Respondent owner shall cooperate with the board's inspection program and with the Board's  
17 monitoring and investigation of Respondent owner owner's compliance with the terms and  
18 conditions of their probation. Failure to cooperate shall be considered a violation of probation.

19 **5. Reimbursement of Board Costs**

20 As a condition precedent to successful completion of probation, Respondent shall pay to the  
21 board his costs of investigation and prosecution in the amount of \$12,242.00, jointly and severally  
22 with Respondent Thomas McGowan. Respondent may make said payments on a payment plan  
23 approved by the Board. Failure to pay costs by the deadline(s) as directed shall be considered a  
24 violation of probation.

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

27 **6. Probation Monitoring Costs**

28 Respondent owner shall pay any costs associated with probation monitoring as determined

1 by the board each and every year of probation. Such costs shall be payable to the board on a  
2 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as  
3 directed shall be considered a violation of probation.

4 **7. Status of License**

5 Respondent owner shall, at all times while on probation, maintain current licensure with the  
6 board. If respondent owner submits an application to the board, and the application is approved,  
7 for a change of location, change of permit or change of ownership, the board shall retain  
8 continuing jurisdiction over the license, and the respondent shall remain on probation as  
9 determined by the board. Failure to maintain current licensure shall be considered a violation of  
10 probation.

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

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

16 Following the effective date of this decision, should respondent owner discontinue  
17 business, respondent owner may tender the premises license to the board for surrender. The board  
18 or its designee shall have the discretion whether to grant the request for surrender or take any  
19 other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
20 license, respondent will no longer be subject to the terms and conditions of probation.

21 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and  
22 renewal license to the board within ten (10) days of notification by the board that the surrender is  
23 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
24 according to board guidelines and shall notify the board of the records inventory transfer.  
25 Respondent owner may not apply for any new licensure from the board for three (3) years from  
26 the effective date of the surrender. Respondent owner shall meet all requirements applicable to  
27 the license sought as of the date the application for that license is submitted to the board.  
28



1           **9. Notice to Employees**

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

12           “Employees” as used in this provision includes all full-time, part-time, volunteer,  
13 temporary, and relief employees and independent contractors employed or hired at anytime,  
14 during probation.

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

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

22           **11. Posted Notice of Probation**

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

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

1 of the licensed entity.

2 The failure to post such notice shall be considered a violation of probation.

3 **12. Violation of Probation**

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

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

17 **13. Completion of Probation**

18 Upon written notice by the board indicating successful completion of probation,  
19 Respondent owner owner's designated representative license will be fully restored.

20 **14. Consultant for Wholesaler**

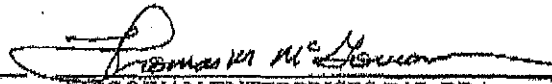
21 During the period of probation, Respondent owner shall retain an independent consultant at  
22 his or her own expense who shall be responsible for reviewing wholesale operations on a monthly  
23 basis, or as determined by the board's designee, for compliance by Respondent with state and  
24 federal laws and regulations governing the practice of pharmacy and for compliance with the  
25 obligations of a wholesaler. The consultant shall be a pharmacist or designated representative  
26 licensed by and not on probation with the board and whose name shall be submitted, for prior  
27 approval, to the board or its designee, within thirty (30) days of the effective date of this decision.  
28 Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be

1 considered a violation of probation,

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
4 discussed it with my attorney, Earl M. Pott, Esq. I understand the stipulation and the effect it  
5 will have on my Wholesaler Permit, I enter into this Stipulated Settlement and Disciplinary  
6 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
7 of the Board of Pharmacy.

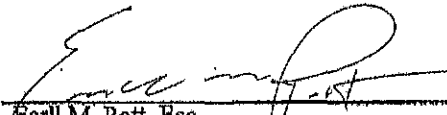
8 DATED: 4-27-15



MCGOWAN ENTERPRISES INC. DBA  
MCGOWAN ENTERPRISES INC./ACUTE CARE  
PHARMACEUTICALS  
Respondent

12 I have read and fully discussed with Respondent owner owner McGowan Enterprises Inc.  
13 dba McGowan Enterprises Inc./Acute Care Pharmaceuticals the terms and conditions and other  
14 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form  
15 and content.

16 DATED: 4/28/2015



Earl M. Pott, Esq.  
Attorney for Respondent  
MCGOWAN ENTERPRISES INC. DBA  
MCGOWAN ENTERPRISES INC./ACUTE CARE  
PHARMACEUTICALS

20 ENDORSEMENT

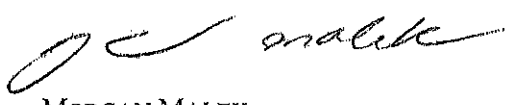
21 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
22 submitted for consideration by the Board of Pharmacy.

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Dated: Apr. 28, 2015

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



MORGAN MALEK  
Deputy Attorney General  
*Attorneys for Complainant*

SD2013705177  
51729172.doc

**Exhibit A**

**Accusation No. 4624**

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  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2996  
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. 4624

12 **MCGOWAN ENTERPRISES INC., DBA**  
13 **MCGOWAN ENTERPRISES INC./**  
14 **ACUTE CARE PHARMACEUTICALS**  
12225 World Trade Drive, Suites A, B, C, D, E  
San Diego, CA 92128

**ACCUSATION**

15 Wholesaler Permit No. WLS 3336

16 and

17 **THOMAS MICHAEL MCGOWAN**  
18 12225 World Trade Center Drive, Suite A  
San Diego, CA 92128

19 Designated Representative No. EXC 13963

20 Respondents.  
21

22  
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  
28

1           2. On or about September 2, 1997, the Board of Pharmacy issued Wholesaler Permit  
2 Number WLS 3336 to McGowan Enterprises Inc., doing business as C.A.T. Kits (Respondent  
3 McGowan Enterprises). On or about September 27, 2012, McGowan Enterprises Inc. changed its  
4 name to do business to McGowan Enterprises, Inc./Acute Care Pharmaceuticals. Since on or  
5 about October 6, 2011, Thomas M. McGowan, EXC 13963 has been the Chief Executive Officer  
6 of McGowan Enterprises, Inc., doing business as McGowan Enterprises, Inc./Acute Care  
7 Pharmaceuticals. The Wholesaler Permit was in full force and effect at all times relevant to the  
8 charges brought herein and will expire on September 1, 2014, unless renewed.

9           3. On or about September 2, 1997, the Board issued Designated Representative License  
10 No. EXC 13963 to Thomas Michael McGowan (Respondent McGowan). The Designated  
11 Representative License was in full force and effect at all times relevant herein and will expire on  
12 September 1, 2014, unless renewed. Since on or about August 13, 2002, Thomas McGowan has  
13 been the Designated Representative-in-Charge of McGowan Enterprises, Inc., doing business as  
14 McGowan Enterprises, Inc./Acute Care Pharmaceuticals.

15                               **JURISDICTION**

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

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

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

24           7. Section 4300.1 of the Code states:

25           The expiration, cancellation, forfeiture, or suspension of a board-issued license  
26 by operation of law or by order or decision of the board or a court of law, the  
27 placement of a license on a retired status, or the voluntary surrender of a license by a  
28 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.

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

2 Any person who has been denied a license or whose license has been revoked  
3 or is under suspension, or who has failed to renew his or her license while it was  
4 under suspension, or who has been a manager, administrator, owner member, officer,  
5 director, associate, or partner of any partnership, corporation, firm, or association  
6 whose application for a license has been denied or revoked, is under suspension or  
7 has been placed on probation, and while acting as the manger, administrator, owner,  
8 member, officer, director, associate, or partner had knowledge or knowingly  
9 participated in any conduct for which the license was denied, revoked, suspended, or  
10 placed on probation, shall be prohibited from serving as a manger, administrator,  
11 owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

#### 17 STATUTORY PROVISIONS

18 9. Section 4022 of the Code states:

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

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

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

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

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

11. Section 4053(a) of the Code states:

Notwithstanding Section 4051, the board may issue a license as a designated  
representative to provide sufficient and qualified supervision in a wholesaler or  
veterinary food-animal drug retailer. The designated representative shall protect the  
public health and safety in the handling, storage, and shipment of dangerous drugs  
and dangerous devices in the wholesaler or veterinary food-animal drug retailer.



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12. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of 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 least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

13. Section 4105, subdivision (a) and (c) of the Code states:

(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 4126.5, subdivision (a), of the Code states:

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

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

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

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

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a 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.

1 (7) To another pharmacy under common control.

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

6 16. Section 4163(a) of the Code states:

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

9 17. Section 4169 of the Code states in pertinent part:

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

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

14 ....

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

17 ....

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

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

23 ....

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

26 ....

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
28 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.

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**REGULATORY PROVISIONS**

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

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

21. California Code of Regulations, title 16, section 1784 states in part:

(a) The designated representative-in-charge of each wholesaler as defined under section 4160 of the Business and Professions Code shall complete a self-assessment of the wholesaler's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

...

(c) The components of this assessment shall be on Form 17M-26 (Rev. 01/11) entitled "Wholesaler Dangerous Drugs & Dangerous Devices Self-Assessment" which is hereby incorporated by reference to evaluate compliance with federal and state laws and regulations.

...

(e) The wholesaler is jointly responsible with the designated representative-in-charge for compliance with this section.

**COST RECOVERY**

22. 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 23. Since September 2, 1997 and at all times referenced herein, Respondent McGowan  
3 was the Designated Representative-in-Charge (DRIC) of Respondent McGowan Enterprises, Inc.  
4 doing business as McGowan Enterprises, Inc./Acute Care Pharmaceuticals (Respondent  
5 McGowan Enterprises).

6 24. On or about October 20, 1998, the Board issued Pharmacy License No. PHY 43622  
7 to Thomas McGowan, doing business as JTM Infusion (JTM Infusion). Thomas McGowan,  
8 doing business as JTM Infusion, is the same individual who owned Respondent McGowan  
9 Enterprises and is the DRIC of Respondent McGowan Enterprises. JTM Infusion was physically  
10 located within Respondent McGowan Enterprises. Its premises were approximately the size of a  
11 closet and there was no separate ingress or egress. JTM Infusion had no pharmacy staff other  
12 than a Pharmacist-in-Charge who was rarely present at JTM Infusion's premises.

13 25. On or about September 20, 2012, the Board conducted a routine inspection of  
14 Respondent McGowan Enterprises. During that inspection, the Board inspector requested records  
15 of Respondent McGowan Enterprises' compliance with federal and state pharmacy law related to  
16 the self-assessment required of Respondent McGowan. Respondent McGowan had not  
17 completed the self-assessment.

18 26. After the September 20, 2012 inspection, Respondent McGowan completed a self-  
19 assessment and answered "yes" to Question No 8.5.3, "Does your business only receive drugs  
20 from a pharmacy if: the drugs are needed to alleviate a shortage? (and only a quantity sufficient  
21 to alleviate a specific shortage.) (B&PC 4126.5[a])." He also answered "yes" to Question No.  
22 8.6.1, "Are the drugs that are purchased from another business or that are sold, traded or  
23 transferred to your business: transacted with a business licensed with this board as a wholesaler or  
24 pharmacy?"

25 27. Respondents ordered dangerous drugs using JTM Infusion's Pharmacy License and  
26 re-sold the drugs "purchased" or furnished by JTM Infusion. Respondents never paid JTM  
27 Infusion for the dangerous drugs that they "purchased" or obtained from JTM Infusion.  
28 Respondents also did not maintain the records of acquisition for dangerous drugs "purchased" or

1 furnished by JTM Infusion except for pedigrees.<sup>1</sup> Respondent McGowan was unaware of the  
2 extent to which Respondent McGowan Enterprises was “purchasing” or obtaining drugs from  
3 JTM Infusion.

4 28. Respondents had also purchased dangerous drugs from Advanced Pharmacy  
5 Homecare (Advanced) and Green Valley Drugs, an entity which is not licensed in California. For  
6 example, Respondents “purchased” or obtained from JTM Infusion 2,408 dangerous drugs in 466  
7 transactions during the period from March 9, 2010 through September 20, 2012. Respondents  
8 purchased at least 4,296 dangerous drugs in 742 transactions from the three pharmacies during the  
9 period from November 2, 2009 through September 20, 2012.

10 29. Respondents’ employees were given access to Advanced’s AmerisourceBergen on-  
11 line account, which allowed Respondents to submit drug orders directly to Advanced’s primary  
12 wholesaler, AmerisourceBergen, using Advanced’s account information. The Board inspector  
13 confirmed this practice with Respondents’ purchasing agent.

14 30. Respondents also purchased 100 Afluria Influenza vaccines, 10 dose vials on  
15 September 10, 2009 and 80 Fluzone vaccines, 5mls on December 30, 2009 from Green Valley  
16 Drugs, an entity which is not licensed in California.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Failure to Keep Records of Acquisition Open for Inspection and to Keep Current**  
19 **Inventory)**

20 31. Respondents are subject to disciplinary action under Code sections 4301(o), for  
21 violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition of  
22 dangerous drugs open for inspection or keep a current inventory as defined by California Code of  
23 Regulations, title 16, section 1718 for the dangerous drugs “purchased” or furnished by JTM  
24 Infusion from at least September 19, 2009 through September 20, 2012, as set forth in paragraphs  
25 23 through 30, which are incorporated herein by reference.

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

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**SECOND CAUSE FOR DISCIPLINE**

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

32. Respondents are subject to disciplinary action under Code section 4301(o), for violating Code sections 4105(a) and (c), in that Respondents failed to retain records for the dangerous drugs "purchased" or furnished by JTM Infusion from at least September 19, 2009 through September 20, 2012 on its licensed premises, as set forth in paragraphs 23 through 30, which are incorporated herein by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Records of Acquisition of Dangerous Drugs)**

33. Respondents are subject to disciplinary action under Code section 4301(o), for violating Code section 4169(a)(5), in that Respondents failed to maintain records for the dangerous drugs "purchased" or furnished by JTM Infusion from at least September 19, 2009 through September 20, 2012, as set forth in paragraphs 23 through 30, which are incorporated herein by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(Aiding or Abetting Unlicensed Wholesalers)**

34. Respondents are subject to disciplinary action under Code section 4301(o), for violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged, assisted in, abetted, or conspired toward, transactions violating section 4160 of the Code, in that pharmacies that purchased dangerous drugs on behalf of Respondents, and/or sold dangerous drugs to Respondents for re-sale, by so doing acted as unlicensed wholesalers, as set forth in paragraphs 23 through 30, which are incorporated herein by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(Purchasing Dangerous Drugs Under Unauthorized Conditions)**

35. Respondents are subject to disciplinary action under Code section 4301(o), for violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged,

1 assisted in, abetted, or conspired toward, transactions violating section 4126.5 of the Code, by  
2 purchasing dangerous drugs from and/or on behalf of pharmacies under unauthorized conditions,  
3 as set forth in paragraphs 23 through 30, which are incorporated herein by reference.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Unauthorized Use of Other Entity's Credit for Purchase of Drugs)**

6 36. Respondents are subject to disciplinary action under Code section 4301(o), for  
7 violating and/or attempting to violate, directly or indirectly, assisted in or abetted the violation of,  
8 or conspired to violate, the laws governing pharmacy, when Respondents solicited, encouraged,  
9 assisted in, abetted, or conspired toward, transactions violating California Code of Regulations,  
10 title 16, section 1783(d), by causing the purchase of dangerous drugs by client pharmacies from  
11 primary wholesalers on pharmacy accounts controlled by Respondents, as set forth in paragraphs  
12 23 through 30, which are incorporated herein by reference.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Supervise)**

15 37. Respondent McGowan is subject to disciplinary action under Code section 4301(o),  
16 for violating Code section 4053(a) when he failed to supervise Respondent McGowan  
17 Enterprises' purchase and re-sale of dangerous drugs, as set forth in paragraphs 23 through 30,  
18 which are incorporated herein by reference.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Purchasing Drugs from Unlicensed Entity)**

21 38. Respondents are subject to disciplinary action under Code section 4301(o), for  
22 violating Code sections 4163(a) and 4169 (a)(1) in that Respondents purchased drugs from an  
23 entity, Green Valley Drugs, which was not licensed in California as a pharmacy or wholesaler, as  
24 set forth in paragraphs 23 through 30, which are incorporated herein by reference.

25 **NINTH CAUSE FOR DISCIPLINE**

26 **(Failure to Complete Self-Assessment)**

27 39. Respondents are subject to disciplinary action under Code section 4301(o), for  
28 violating California Code of Regulations, title 16, section 1784, in that Respondent McGowan

1 failed to complete a self-assessment of Respondent McGowan Enterprises' compliance with  
2 federal and state laws, as set forth in paragraphs 23 through 30, which are incorporated herein by  
3 reference.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Knowingly Making or Signing Document Falsely Representing Existence**  
6 **or Nonexistence of Facts)**

7 40. Respondents are subject to disciplinary action under Code section 4301(g), for  
8 making or signing a self-assessment form that falsely represented the existence or nonexistence of  
9 facts, as set forth in paragraphs 23 through 30, which are incorporated herein by reference.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 41. Respondents are each and severally subject to discipline under section 4301 of the  
13 Code, in that the acts described in paragraphs 23 through 30 constitute unprofessional conduct.

14 **OTHER MATTERS**

15 42. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit  
16 Number WLS 3336, issued to McGowan Enterprises Inc., doing business as McGowan  
17 Enterprises, Inc./Acute Care Pharmaceuticals and Thomas McGowan while acting as the  
18 manager, administrator, owner, member, officer, director, associate, or partner of McGowan  
19 Enterprises, doing business as McGowan Enterprises, Inc./Acute Care Pharmaceuticals had  
20 knowledge of or knowingly participated in any conduct for which Wholesaler Permit Number  
21 WLS 3336 was revoked, suspended or placed on probation, Thomas McGowan shall be  
22 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,  
23 or partner of a licensee for five years if Wholesaler Permit Number WLS 3336 is placed on  
24 probation or until Wholesaler Permit Number WLS 3336 is reinstated if it is revoked.

25 43. Pursuant to Code section 4307, if discipline is imposed on Designated  
26 Representative License No. EXC 13963 issued to Thomas Michael McGowan, Thomas  
27 McGowan shall be prohibited from serving as a manager, administrator, owner, member, officer,  
28 director, associate, or partner of a licensee for five years if Designated Representative License



1 Number EXC 13963 is placed on probation or until Designated Representative License Number  
2 EXC 13963 is reinstated if it is revoked.

3 **DISCIPLINARY CONSIDERATIONS**

4 44. To determine the degree of discipline, if any, to be imposed on Respondents,  
5 Complainant alleges that on or about July 16, 2013, the Board issued Modified Citation number  
6 CI 2012 55994 against Thomas Michael McGowan for violating California Code of Regulations,  
7 title 16, section 1708.2 and Business and Professions Code section 4312(b), in that he failed to  
8 notify the Board prior to the transferring or selling of dangerous drugs, devices or hypodermics  
9 inventory to another licensee. He paid the fine.

10 **PRAYER**

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

13 1. Revoking or suspending Wholesaler Permit Number WLS 3336, issued to McGowan  
14 Enterprises Inc., doing business as McGowan Enterprises, Inc./Acute Care Pharmaceuticals;

15 2. Revoking or suspending Designated Representative License No. EXC 13963, issued  
16 to Thomas Michael McGowan;

17 3. Prohibiting Thomas McGowan from serving as a manager, administrator, owner,  
18 member, officer, director, associate, or partner of a licensee for five years if Wholesaler Permit  
19 Number WLS 3336 is placed on probation or until Wholesaler Permit Number WLS 3336 is  
20 reinstated if Wholesaler Permit Number WLS 3336 issued to McGowan Enterprises, Inc., doing  
21 business as McGowan Enterprises, Inc./Acute Care Pharmaceuticals is revoked;

22 4. Prohibiting Thomas McGowan from serving as a manager, administrator, owner,  
23 member, officer, director, associate, or partner of a licensee for five years if Designated  
24 Representative License Number EXC 13963 if placed on probation or until Designated  
25 Representative License Number EXC 13963 is reinstated if Designated Representative License  
26 Number EXC 13963 issued to Thomas McGowan is revoked;

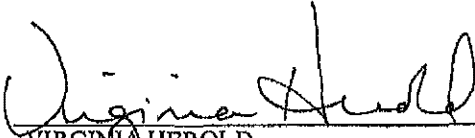
27 5. Ordering McGowan Enterprises Inc., doing business as McGowan Enterprises,  
28 Inc./Acute Care Pharmaceuticals and Thomas Michael McGowan to pay the Board of Pharmacy

1 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
2 Professions Code section 125.3;

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

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DATED: 2/14/14



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

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