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

11 In the Matter of the Accusation Against:

Case No. 3331

12 **SUPERIOR MEDICAL SUPPLY INC.;**
MARK C. SNYDER, CEO
13 **11005 Dover Street, Suite 100**
West Minster, CO 80021

A C C U S A T I O N

14 **Original Out of State Distributor Permit No.**
15 **OSD 4574**

16 **and**

17 **JAKE J. SNYDER,**
18 **Designated Representative-in-Charge**
P.O. BOX 270930
19 **Superior, CO 80027**

20 **Original Certificate Number No. EXC 18204**

21 Respondents.

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 2. On or about March 24, 2006, the Board of Pharmacy issued Original Out of State
28 Distributor Permit Number OSD 4574 to Superior Medical Supply Inc., Mark C. Snyder, CEO

1 (Respondents Superior Medical). The Original Out of State Distributor Permit was in full force
2 and effect at all times relevant to the charges brought herein and will expire on March 1, 2010,
3 unless renewed.

4 3. On or about July 20, 2005, the Board of Pharmacy issued Original Certificate
5 Number Number EXC 18204 to Jake J. Snyder, to act as a designated representative in California.
6 (Respondent Snyder). The Original Certificate Number was in full force and effect at all times
7 relevant to the charges brought herein and will expire on July 1, 2010, unless renewed. Jake J.
8 Snyder is, and has been, the Designated Representative-in-Charge of Respondent Superior
9 Medical Supply since March 24, 2009.

10 **JURISDICTION**

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

14 5. Section 4300 of the Code states, in pertinent part, that every license issued by the
15 Board is subject to discipline, including suspension or revocation.

16 6. Section 4032 of the Code states as follows”
17 “‘License’ means and includes any license, permit, registration, certificate, or exemption
18 issued by the board and includes the process of applying for and renewing the same.”

19 7. Section 4304 of the Code states that the board may deny, revoke, or suspend the
20 license of an out-of-state manufacturer, wholesaler, or pharmacy for any violation of the
21 provisions of Chapter 9 of the pharmacy laws of the State of California (commencing with section
22 4300).

23 8. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
25 disciplinary action during the period within which the license may be renewed, restored, reissued
26 or reinstated.

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1 9. Section 4161 of the Code provides, in part, as follows:

2 “(a) A person located outside this state that ships, mails, or delivers dangerous drugs or
3 dangerous devices into this state shall be considered a nonresident wholesaler.

4 (b) A nonresident wholesaler shall be licensed by the board prior to shipping, mailing, or
5 delivering dangerous drugs or dangerous devices to a site located in this state.

6 ...

7 (j) The designated representative-in-charge shall be responsible for the nonresident
8 wholesaler’s compliance with state and federal laws governing wholesalers. . . .”

9 10. Section 4301 of the Code states:

10 Section 4301 of the Code states, in part, as follows:

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

14 ...

15 (j) The violation of any of the statutes of this state, or any other state, or of the United
16 States regulating controlled substances and dangerous drugs.

17 ...

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

22 11. Section 4169 of the Code states, in pertinent part:

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

24 ...

25 (3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably
26 should have known were misbranded, as defined in Section 111335 of the Health and Safety
27 Code.”

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12. Code section 651, subdivision (a), provides as follows:

“(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.”

13. Section 4341 provides that, “Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.”

14. Health and Safety Code section 11255 provides:

“The taking of any order, or making of any contract or agreement, by any traveling representative or employee of any person for future delivery in this state, of any controlled substance constitutes a sale with the meaning of this division.”

15. Title 21, Code of Federal Regulations, section 1301.11, provides in part:

“(a) Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law”

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1 **COST RECOVERY**

2 16. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Sale, Purchase, Trade, or Transfer of Misbranded Drugs)**

8 **[Respondents Superior Medical and Snyder]**

9 17. Respondents Superior Medical and Snyder are subject to disciplinary action under
10 section 4301, subdivisions (j) and (o), in conjunction with Code section 4169, subdivision (a)(3)
11 and Health and Safety Code section 111335, in that Respondents purchased, traded, sold or
12 transferred dangerous drugs that they knew, or reasonably should have known were misbranded.

13 The circumstances are as follows:

- 14 a) From on or about February 28, 2008 through on or about June 4, 2008, Respondents
15 sold to doctors and clinics Medroxyprogesterone 150mg/ml pre-filled syringes that
16 were misbranded with false or misleading labels that read "Medroxy Progst PF
17 (75/0.5mg) ml" or "Medroxy Proge (75/.5) 75/0.5mg" that were manufactured by
18 Advanced Compounding Pharmacy (ACP). ACP, which is located in North
19 Hollywood, California, is a licensee permitted to compound injectable sterile drug
20 products. The drugs were further misbranded in that the drugs were labeled by ACP
21 with a one year expiration date when they were shipped outside of California and
22 with a six month expiration date when they were shipped in California.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(False, Misleading, and/or Deceptive Advertising of Prescription Drugs or Devices)**

25 **[Respondents Superior Medical and Snyder]**

26 18. Respondents Superior Medical and Snyder are subject to disciplinary action under
27 section section 4301, subdivisions (j) and (o), in conjunction with Code section 651, subdivision
28 (a), and Code section 4341, in that Respondents disseminated false, misleading or deceptive

1 statements, claims or images via the internet, to induce the rendering of professional services or
2 furnishing of products. The circumstances are as follows:

- 3 a) On or about April 29, 2008, in an e-mail communication from Daniela Resh, *i.e.*,
4 Respondents' National Account Manager, Ms. Resh falsely stated, "Currently, no
5 manufacturer makes Medroxprogesterone in pre-filled syringe or a multi-dose vial."
6 b) On or about June 6, 2008, Ms. Resh faxed a Price Comparison showing a difference
7 in price for Depo-Provera at \$50.00 compared to \$17.67 for the
8 Medroxyprogesterone 150mg drug from Superior Medical Supply sold under NDC
9 51552-0790-04.
10 c) In fact, the quoted NDC number is the micronized powder of medroxyprogesterone
11 from a chemical company and is not the same drug as the finished product from a
12 licensed manufacturer. The internet advertisement and its NDC number are
13 deceptive and misleading to purchasers whose only conclusion is that Superior
14 Medical Supply's medroxyprogesterone compared to the branded Depo-Provera
15 from Pfizer is less expensive and from a licensed manufacturer.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unlicensed Sale of Controlled Substances Without Valid Registration)**

18 **[Respondents Superior Medical and Snyder]**

19 19. Respondents Superior Medical and Snyder are subject to disciplinary action under
20 section 4301, subdivisions (j) and (o), in conjunction with Title 21, Code of Federal Regulations,
21 section 1301.11(a) and Health and Safety Code section 11255, in that Respondents took orders
22 for and/or made contracts or agreements for delivery of controlled substances within California
23 and without a valid registration to do so. The circumstances are as follows:

- 24 a) Between February 29, 2008 and July 24, 2008, Superior Medical Supply, Inc.,
25 located at 11005 Dover Street, Suite 1100, in Westminster, Colorado, was **not**
26 registered with the Drug Enforcement Agency (DEA) to distribute, dispense, import
27 or export any controlled substances.
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1 b) Between February 29, 2008 and July 24, 2008, Superior Medical Supply, Inc., took
2 numerous orders for and made agreements with customers, *i.e.*, doctors and medical
3 facilities, for controlled substances and placed the orders with Advanced
4 Compounding Pharmacy. Advanced Compounding drop shipped the orders to
5 Respondent's customers and invoiced Respondent for the controlled substances
6 drop shipped. Respondents paid Advanced Compounding for the order and
7 invoiced the doctors and medical facilities directly for the controlled substances
8 distributed. Respondents took orders and made contracts or agreements for
9 Schedule CII, III, IV, and V controlled substances from numerous doctors, medical
10 facilities, and hospitals within California during the period between February 29,
11 2008 and July 24, 2008.

12 **PRAYER**

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

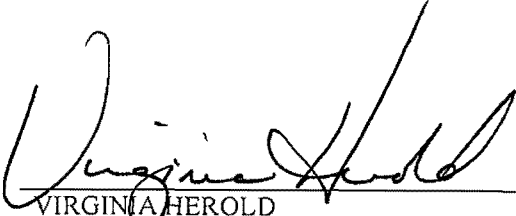
- 15 1. Revoking or suspending Original Out of State Distributor Permit Number OSD 4574,
16 issued to Superior Medical Supply Inc., Mark C. Snyder, CEO.
- 17 2. Revoking or suspending Original Certificate Number EXC 18204, issued to Jake J.
18 Snyder, Designated Representative.
- 19 3. Ordering Superior Medical Supply Inc., Mark C. Snyder, CEO, and Jake J. Snyder,
20 Representative-in-Charge, to pay the Board of Pharmacy the reasonable costs of the investigation
21 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/30/09



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

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