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**BEFORE THE STATE BOARD OF PHARMACY
STATE OF COLORADO**

Case No. 2009-002934

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF DISCIPLINARY PROCEEDINGS REGARDING THE LICENSE TO PRACTICE AS AN IN-STATE PRESCRIPTION DRUG WHOLESALER IN THE STATE OF COLORADO OF SUPERIOR MEDICAL SUPPLY, INC., WHI 6006,

Respondent,

IT IS HEREBY STIPULATED AND AGREED by and between the Colorado State Board of Pharmacy ("Board") and Superior Medical Supply, Inc., ("Respondent") to resolve all matters pertaining to Board Case Number 2009-002934, as follows:

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over Respondent, its license to practice as an in-state prescription drug wholesaler, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to the provisions of the Pharmaceuticals and Pharmacists Act at Title 12, Article 22, C.R.S.
2. Respondent was originally licensed to practice as an in-state prescription drug wholesaler in the State of Colorado at all times relevant to this disciplinary action.
3. Respondent admits these findings and hereby waives any further proof in this proceeding before the Board regarding the following facts.
4. On or about the following dates, Respondent received prescription drugs from the following entities which, at the time of receipt, were not registered with the Board as an Out of State Prescription Drug Wholesaler:

Date	Entity Name	Entity Location
01/26/09	Alpharm, Inc.	2613 W. Oxford Loop S1, Oxford, MS 38655
01/08/08	Birmingham Medical Alliance	194 Narrows Dr, Ste 2, Birmingham, AL 35242
12/30/08	Harford Health Services	1 Vale Rd, Unit 100, Bel Air, MD 21014
08/22/08	Harrison Healthcare, Inc.	2328 N. Charles St., Baltimore, MD 21218
12/08/08	HUB Pharmaceuticals	9339 Charles Smith Ave, Bldg 150, Rancho Cucamonga, CA 91730
11/12/08	Huerfano Family Healthcare	411 N. Lombard St., Ste B, Oxnard, CA 93030
01/06/09	Lighthouse Pharmaceuticals, Inc.	45 Columbia Dr., Unit 500, Pooler, GA 31322
12/24/08	McGowan Enterprises, Inc.	12225 World Trade Dr., Ste F, San Diego, CA 92128
01/20/09	Vital Healthcare, LLC	11 E. Lathrop Ave., Savannah, GA 31416



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5. Respondent's conduct, as set forth above, constitutes violations of the following sections of the Colorado Revised Statutes and Board Rules:

Colorado Revised Statutes

12-22-125. Unprofessional conduct - grounds for discipline.

(1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(c) Has violated:

(I) Any of the provisions of this part 1, including but not limited to any acts in section 12-22-126;

(II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs.

12-22-802. Wholesaler license requirements.

(2) (c) The board shall not issue or renew a license to a wholesaler who does not comply with this part 8.

12-22-806. Penalty.

(1) A person who engages in the wholesale distribution of prescription drugs in violation of this part 8 shall be subject to a penalty of up to fifty thousand dollars.

* * *

Pharmacy Board Rules and Regulations

15.08.14 Receipts.

a. In-state prescription drug wholesalers shall only receive prescription drugs and controlled substances from an entity that is registered by the Colorado State Board of Pharmacy. This section shall not apply to intracompany or reverse distribution transactions.

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Page Commands

Goto Page

[PRINT](#)

Rotate Page

Document Commands

Right Click then
Save Target As to
[Download Document](#)
Click [here](#) to go back

- 6. The Board finds and concludes, and Respondent agrees, that based upon Respondent's above-described violations of the Pharmaceuticals and Pharmacists Act and relevant rules and regulations, the following discipline is just and appropriate under the circumstances.

DISPOSITION

\$ 45,000.00 Fine and Terms

- 7. **Fine with Surcharge.** Respondent Wholesaler accepts the following discipline: Pursuant to §12-22-125.2(5), C.R.S., Respondent shall pay a fine of Forty Five Thousand Dollars and No Cents (\$ 45,000.00) for all conduct of procuring prescription drugs from unregistered sources prior to January 1, 2009. Respondent Wholesaler understands and acknowledges, pursuant to §24-34-108, C.R.S., that the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Respondent shall therefore pay a total amount of Fifty One Thousand Seven Hundred Fifty Dollars and No Cents (\$ 51,750.00). The total amount shall be payable to the State of Colorado and shall be remitted as follows: Ten Thousand Three Hundred Fifty Dollars and No Cents (\$ 10,350.00) is to be included when Respondent Wholesaler submits this signed Final Agency Order to the Board. Thereafter, the remaining balance of Forty One Thousand Four Hundred Dollars and No Cents (\$ 41,400.00) is due in twenty-four monthly installments of One Thousand Seven Hundred Twenty Five Dollars and No Cents (\$ 1,725.00) per month, payable on the fifteenth day of each month, beginning on August 15, 2009 until paid in full.
- 8. Respondent must at all times procure prescription drug and controlled substance stocks only from entities registered by the Colorado State Board of Pharmacy. This shall not apply to intracompany or reverse distribution transactions.
- 9. Respondent must ensure that all required records detailing the receipt of prescription drugs and controlled substances include the name of the distributing wholesaler.
- 10. **Advisements and Waivers.** Respondent enters into this Stipulation and Final Agency Order freely and voluntarily, whether or not it has consulted with legal counsel. The undersigned authorized agent for Respondent acknowledges Respondent's understanding that it has the following rights:
 - a. To have formal notice of hearing and charges served upon it;
 - b. To respond to said formal notice of charges;
 - c. To have a formal disciplinary hearing pursuant to §12-22-125, C.R.S.; and,
 - d. To appeal this Board order.

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Respondent freely waives these rights, and acknowledges that such waiver is made voluntarily in consideration for the Board's limiting the action taken against it to the sanctions imposed herein.

11. **Acknowledgments.** The undersigned authorized agent for Respondent has read this Stipulation and Final Agency Order in its entirety and acknowledges, whether or not Respondent has consulted with legal counsel, that Respondent understands its legal consequences and agrees that none of its terms or conditions are unconscionable.
12. **Violations.** Time is of the essence to this Stipulation and Final Agency Order. It is the responsibility of Respondent to take all appropriate steps to comply fully with this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order may be sanctioned as provided under §12-22-125.2(4), C.R.S., and may be sufficient grounds for additional discipline, including but not limited to revocation of its registration. The pendency of any suspension or disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.
13. **Integration and Severability.** Upon execution by all parties, this Stipulation and Final Agency Order shall represent the entire and final agreement of and between the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.
14. **Public Record.** Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record, maintained in the custody of the Board.
15. **Effective Date.** This Stipulation and Final Agency Order shall become effective upon signature of a Board member or representative.

ACCEPTED AND AGREED BY



Page Commands

Goto Page




Rotate Page

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Authorized Agent of Wholesaler

Dated: 6/16/09

Subscribed and sworn to by MARK SNYDER, in his/her capacity as
an authorized agent of Superior Medical Supply, Inc. before me in the County of
JEFFERSON, State of COLORADO, this 16th day of JUNE
2009.


Notary Public

DAVID WHITEFIELD
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires: January 28, 2011

My commission expires: 1/26/11

FINAL AGENCY ORDER

WHEREFORE, the within Stipulation and Final Agency Order is approved,
accepted, and hereby made an order of the Board.

DONE AND EFFECTIVE THIS 24th DAY OF June, 2009.

State Board of Pharmacy

BY: 
Wendy Anderson
Program Director