

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5998

13 **PCM VENTURE 1 LLC DBA KWIKMED**
14 **Peter Ax, Member**
15 **9836 S. Jordan Gateway**
16 **Sandy, UT 84070**

A C C U S A T I O N

17 **Non-Resident Pharmacy Permit No. NRP 1593**

18 **and**

19 **PCM VENTURE 1 LLC DBA**
20 **PCM VENTURE 1 LLC**
21 **Peter Ax, Member**
22 **5201 Green Street, Suite 255**
23 **Murray, UT 84123**

24 **Non-Resident Pharmacy Permit No. NRP 792**

25 Respondents.

26 Complainant alleges:

27 PARTIES

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

2. On or about May 10, 2016, the Board of Pharmacy issued Non-Resident Pharmacy
Permit Number NRP 1593 to PCM Venture 1 LLC dba PCM Venture 1 LLC dba Kwikmed
(Respondent Kwikmed). The records of the Board show that Peter Ax is and has been a member

1 and 100% shareholder since May 5, 2016. The Permit was in full force and effect at all times
2 relevant to the charges herein and will expire on May 1, 2018, unless renewed.

3 3. On or about June 11, 2007, the Board of Pharmacy issued Non-Resident Pharmacy
4 Permit Number NRP 792 to PCM Venture 1 LLC dba PCM Venture 1 LLC. (Respondent PCM).
5 The records of the Board show that Peter Ax was a member and 100% shareholder from June 11,
6 2007 to May 17, 2016. The Permit was in full force and effect at all times relevant to the charges
7 herein. The license was canceled on or about May 17, 2016.

8 JURISDICTION

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

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

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

17 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
18 suspension of a Board-issued license, the placement of a license on a retired status, or the
19 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
20 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
21 licensee or to render a decision suspending or revoking the license.

22 STATUTORY AND REGULATORY PROVISIONS

23 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
24 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
25 not be limited to, any of the following:

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

28 ///

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

5 9. Section 4067, subdivision (a), of the Code provides, in pertinent part, that no person
6 or entity shall dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or
7 dangerous devices, as defined in section 4022 of the Code, on the internet for delivery to any
8 person in this state without a prescription issued pursuant to a good faith prior examination of a
9 human or animal for whom the prescription is meant if the person or entity either knew or
10 reasonably should have known that the prescription was not issued pursuant to a good faith prior
11 examination of a human or animal, or if the person or entity did not act in accordance with
12 California Code of Regulations, title 16, section 1761.

13 10. California Code of Regulations, title 16, section 1761, provides that no pharmacist
14 shall compound or dispense any prescription which contains any significant error, omission,
15 irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the
16 pharmacist shall contact the prescriber to obtain information needed to validate the prescription.
17 Even after conferring with the prescriber, a pharmacist shall not compound or dispense a
18 controlled substance prescription where the pharmacist knows or has objective reason to know
19 that said prescription was not issued for a legitimate medical purpose.

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

23 DANGEROUS DRUGS

24 12. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
26 except veterinary drugs that are labeled as such, and includes the following:

27 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
28 prescription,’ ‘Rx only,’ or words of similar import.

1 ...
2 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
3 prescription or furnished pursuant to Section 4006.”

4 13. **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by Business
5 and Professions Code section 4022, intended as a treatment for erectile dysfunction.

6 14. **Cialis** is a brand name for **tadalafil**, a dangerous drug as designated by Business and
7 Professions Code section 4022, intended as a treatment for erectile dysfunction.

8 FACTUAL SUMMARY

9 15. On or about February 23, 2012, Respondent PCM was the subject of Citation No. CI
10 2010 47703 issued under the authority of the Board. That citation alleged that Respondent PCM
11 had dispensed 14,807 prescriptions for patients in California that were obtained over the internet,
12 not issued pursuant to a good faith prior examination, and were pursuant to prescriptions written
13 by physicians not licensed in California to treat California patients. Respondent PCM appealed
14 the citation. A subsequent Stipulated Settlement was reached between Respondent PCM and the
15 Executive Officer for the Board of Pharmacy whereby Respondent PCM withdrew its appeal,
16 agreed to pay a fine, and agreed to the following order of abatement to be added to the citation:

17 “Henceforth and without limitation as to time:

18 (a) Neither Respondent, nor any owner of Respondent or Respondent’s stock, nor any
19 manager, administrator, member, officer, director, trustee, associate, or partner of Respondent,
20 nor any other entity, individual, or group sharing ownership, management, administration,
21 membership, officer(s), director(s), trustee(s), associate(s) or partner(s) with Respondent, shall
22 furnish or dispense dangerous drugs or controlled substances to any person in California, or cause,
23 aid, abet, or facilitate furnishing or dispensing of dangerous drugs or controlled substances to any
24 person in California, except when all of the following conditions are met:

25 (1) The dangerous drug or controlled substance is dispensed or furnished pursuant to a
26 valid, current prescription issued by a prescriber with a valid, current California license
27 that authorizes issuance of a prescription for the drug in question to a California patient, as
28 well as any federal registration that may be required by the prescription in question; and

1 (2) Respondent has complied with all federal and state laws and regulations pertaining to
2 dispensing or furnishing of controlled substances and dangerous drugs.

3 (b) Any violation of these requirements shall be deemed unprofessional conduct and shall
4 constitute cause for discipline against Respondent.”

5 16. Between on or about December 10, 2012 and on or about May 3, 2016, Respondent
6 Kwikmed and/or Respondent PCM, and/or Respondents, dispensed or furnished forty nine (49)
7 prescriptions for patients in California that were written by physicians not licensed in California.
8 Most of these prescriptions were written for **Viagra** or **Cialis** or their generic equivalents.

9
10 FIRST CAUSE FOR DISCIPLINE

11 (Dispensing or Furnishing Invalid Internet Prescriptions)

12 17. Respondents are subject to discipline under section 4301(j) and/or (o) of the Code,
13 and/or section 4067(a) of the Code, and/or California Code of Regulations, title 16, section 1761,
14 in that Respondents, as described in paragraph 16 above, dispensed or furnished, or caused to be
15 dispensed or furnished, conspired to dispense or furnish, and/or assisted in or abetted dispensing
16 or furnishing of, a dangerous drug, as defined in section 4022 of the Code, on the internet for
17 delivery to any person in this state without a prescription issued pursuant to a good faith prior
18 examination when Respondents either knew or reasonably should have known the prescription
19 was not issued pursuant to a good faith prior examination, and/or Respondents dispensed or
20 furnished, or cause to be dispensed or furnished, conspired to dispense or furnish, and/or assisted
21 in or abetted dispensing or furnishing of, a prescription which contained a significant error,
22 omission, irregularity, uncertainty, ambiguity or alteration.

23
24 SECOND CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

26 18. Respondent is subject to discipline under section 4301 of the Code in that
27 Respondent, as described in paragraphs 15 to 17 above, engaged in unprofessional conduct.

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