

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

In the Matter of the Accusation Against:

**CVS PHARMACY #1666
dba CVS PHARMACY #1666
846 West Avenue K
Lancaster, CA 93534
Pharmacy Permit No. PHY 48255**

**SUSAN JENEVIVE MEGWA
1900 White Oak Clearing
Southlake, TX 96092
Pharmacist License No. RPH 59389**

Respondents.

Case No. 4863

**AS TO RESPONDENT CVS
PHARMACY #1666 dba CVS
PHARMACY #1666 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 at 5:00 p.m. on July 7, 2017.

It is so ORDERED on June 7, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:
11 **CVS PHARMACY #1666**
12 **dba CVS PHARMACY # 1666**
846 West Avenue K
13 Lancaster, CA 93534
Pharmacy Permit No. PHY 48255
14
15 **AND**
16 **SUSAN JENEVIVE MEGWA**
1900 White Oak Clearing
17 Southlake, TX 76092
Pharmacist License No. RPH 59389
18
19 Respondents.

Case No. 4863
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL**
[AS TO RESPONDENT
CVS PHARMACY #1666
dba CVS PHARMACY # 1666
ONLY]
[Bus. & Prof. Code § 495]

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
24 (Board). She brought this action solely in her official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Susan Melton Wilson, Deputy
26 Attorney General.

27 2. Respondent CVS Pharmacy #1666, a corporation, doing business as (dba) CVS
28 Pharmacy #1666 (Respondent) is represented in this proceeding by attorneys Paul Van

1 Hoomissen, Much Shelist, P.C. at 2 Park Plaza, Suite 1075, Irvine, CA, 91614, and Harold B.
2 Hilborn, Much Shelist, P.C. at 191 North Wacker Drive, 18th floor, Chicago, Illinois, 60606.

3 JURISDICTION

4 3. On or about September 11, 2006, the Board of Pharmacy issued Pharmacy Permit
5 Number PHY 48255 to CVS Pharmacy #1666, a corporation, dba CVS Pharmacy #1666
6 (Respondent). Between May 28, 2007 and May 1, 2009, Susan Jenevive Megwa was the
7 registered Pharmacist-in-Charge of Respondent. The Pharmacy Permit was in full force and
8 effect at all times relevant to the charges brought herein and will expire on June 1, 2017, unless
9 renewed.

10 4. Accusation No. 4863 was filed before the Board of Pharmacy (Board), Department of
11 Consumer Affairs and is currently pending against Respondent. The Accusation and all other
12 statutorily required documents were properly served on Respondent on July 25, 2016.
13 Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation
14 No. 4863 is attached as **Exhibit A** and incorporated herein by reference.

15 ADVISEMENT AND WAIVERS

16 5. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 4863 Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
19 Order for Public Repeval.

20 6. Respondent is fully aware of its legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
22 her own expense; the right to confront and cross-examine the witnesses against it ; the right to
23 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
24 the attendance of witnesses and the production of documents; the right to reconsideration and
25 court review of an adverse decision; and all other rights accorded by the California
26 Administrative Procedure Act and other applicable laws.

27 7. By its authorized representative, Respondent voluntarily, knowingly, and intelligently
28 waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. By its authorized representative, Respondent admits the truth of each and every
3 charge and allegation in Accusation No. 4863.

4 9. By its authorized representative, Respondent agrees that its Pharmacy Permit is
5 subject to discipline and agrees that Respondent will be bound by the Disciplinary Order below.

6 CONTINGENCY

7 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
8 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
9 communicate directly with the Board regarding this stipulation and settlement, without notice to
10 or participation by Respondent or her counsel. By signing the stipulation, Respondent
11 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
12 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
13 as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Repeval
14 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
15 between the parties, and the Board shall not be disqualified from further action by having
16 considered this matter.

17 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including
19 Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and
20 effect as the originals.

21 12. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
22 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
23 of their agreement. It supersedes any and all prior or contemporaneous agreements,
24 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
25 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
26 supplemented, or otherwise changed except by a writing executed by an authorized representative
27 of each of the parties.
28

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 48255 issued to Respondent
6 CVS Pharmacy #1666, dba CVS Pharmacy #1666, shall be publicly reprovved by the Board of
7 Pharmacy under Business and Professions Code section 495 in resolution of Accusation No.
8 4863, attached as **Exhibit A**.

9 **Cost Recovery.** Respondent shall pay Ten Thousand Dollars (\$10,000.) to the Board for
10 its costs associated with the investigation and enforcement of this matter. Respondent shall be
11 permitted to pay these costs in a payment plan approved by the Board. If Respondent fails to pay
12 the Board costs as ordered, Respondent shall not be allowed to renew its Pharmacy Permit until
13 Respondent pays costs in full.

14 **ACCEPTANCE**

15 I am the authorized representative of Respondent. On behalf of Respondent, I have
16 carefully read the above Stipulated Settlement and Disciplinary Order for Public Repraval and
17 have fully discussed it with the attorneys. I understand the stipulation and the effect it will have
18 on Respondent's Pharmacy Permit No. PHY 48255. I enter into this Stipulated Settlement and
19 Disciplinary Order for Public Repraval voluntarily, knowingly, and intelligently, and agree to be
20 bound by the Decision and Order of the Board of Pharmacy.

21 DATED: 2/13/17

22 JEFF SINKO
23 Senior Vice President of Regulatory Affairs
24 Authorized Representative of Respondent

25 I have read and fully discussed with the authorized representative of Respondent, all terms
26 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
27 Order for Public Repraval. I approve its form and content.

28 DATED: 2/13/2017

PAUL VAN HOOMISSEN
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: *2-21-17*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General



SUSAN MELTON WILSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4863

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804
E-mail: Susan.Wilson@doj.ca.gov
7 *Attorneys for Complainant*

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. 4863

12 **CVS PHARMACY #1666**
13 **dba CVS PHARMACY # 1666**
846 West Avenue K
14 Lancaster, CA 93534
Pharmacy Permit No. PHY 48255
15 **AND**
16 **SUSAN JENEVIVE MEGWA**
2716 Paxton Avenue
17 Palmdale, CA 93551
Pharmacist License No. RPH 59389

ACCUSATION

18 Respondents.

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about September 11, 2006, the Board of Pharmacy issued Pharmacy Permit
25 Number PHY 48255 to CVS Pharmacy #1666, a corporation, dba CVS Pharmacy #1666
26 (Respondent Pharmacy). Between May 28, 2007 and May 1, 2009, Susan Jenevive Megwa was
27 the registered Pharmacist-in-Charge of Respondent Pharmacy. The Pharmacy Permit was in full
28 force and effect at all times relevant to the charges brought herein and will expire on June 1,

1 2016, unless renewed.

2 3. On or about March 12, 2007 the Board of Pharmacy issued Pharmacist License
3 Number RPH 59389 to Susan Jenevive Megwa (Respondent Megwa). Respondent Megwa was
4 the registered Pharmacist-in-Charge of Respondent CVS Pharmacy #1666 between May 28,
5 2007 and May 1, 2009. Respondent's Pharmacist License was in full force and effect at all times
6 relevant to the charges brought herein, expired on July 31, 2012, and has not been renewed.

7 **JURISDICTION**

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

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

15 5. 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 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
27 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
28 guilty of unprofessional conduct and who has met all other requirements for licensure. The board

1 may issue the license subject to any terms or conditions not contrary to public policy, including,
2 but not limited to, the following:

3 "(1) Medical or psychiatric evaluation.

4 "(2) Continuing medical or psychiatric treatment.

5 "(3) Restriction of type or circumstances of practice.

6 "(4) Continuing participation in a board-approved rehabilitation program.

7 "(5) Abstention from the use of alcohol or drugs.

8 "(6) Random fluid testing for alcohol or drugs.

9 "(7) Compliance with laws and regulations governing the practice of pharmacy.

10 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
11 certificate of licensure for any violation of the terms and conditions of probation. Upon
12 satisfactory completion of probation, the board shall convert the probationary certificate to a
13 regular certificate, free of conditions.

14 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
15 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
16 shall have all the powers granted therein. The action shall be final, except that the propriety of
17 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
18 Civil Procedure."

19 6. Section 4300.1 of the Code states:

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

25 7. Section 4301 of the Code states:

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

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"(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

. . .

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

. . .

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

. . .

8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

10. Health and Safety Code section 11153 (a) states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the

1 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
2 an order purporting to be a prescription which is issued not in the usual course of professional
3 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
4 controlled substances, which is issued not in the course of professional treatment or as part of an
5 authorized narcotic treatment program, for the purpose of providing the user with controlled
6 substances, sufficient to keep him or her comfortable by maintaining customary use.”

7 REGULATORY PROVISION(S)

8 11. California Code of Regulations, title 16, section 1761 states:

9 (a) No pharmacist shall compound or dispense any prescription which contains any
10 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
11 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
12 validate the prescription.

13 (b) Even after conferring with the prescriber, a pharmacist shall not compound or
14 dispense a controlled substance prescription where the pharmacist knows or has objective reason
15 to know that said prescription was not issued for a legitimate medical purpose.

16 DEFINITIONS

17 12. Hydromorphone—also commonly know by the brand name **Dilaudid** - is a
18 Scheduled II controlled substance pursuant to Health and Safety Code Section 11055 (b)(1)(J)
19 and is a dangerous drug within the meaning of Business and Professions Code section 4022.
20 Hydromorphone/Dilaudid is a narcotic analgesic typically prescribed for the relief of severe pain.

21 13. Oxycodone—also commonly known by the brand names **Oxycontin** or **OxyIR**,
22 is a Scheduled II controlled substance pursuant to Health and Safety Code Section 11055
23 (b)(1)(M) and is a dangerous drug within the meaning of Business and Professions Code section
24 4022. Oxycodone is a narcotic analgesic typically prescribed for the relief of severe pain.

25 FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

26 14. The following allegations are common to all causes for discipline in this matter:

27 A. At all times relevant herein, Respondent Megwa was the Pharmacist-in-Charge of
28 Respondent Pharmacy, a retail store operated by CVS Pharmacy corporation, located in the city

1 of Lancaster, CA.

2 **Exposure of Prescription Fraud Scheme**

3 B. In or about August of 2010, the Board of Pharmacy was contacted by a CA
4 Department of Health Care Services (DHCS) investigator who advised that a DHCS
5 investigation had resulted in the discovery of hundreds of forged and falsified controlled
6 substance prescriptions which had been filled at Respondent CVS Pharmacy #1666. DHCS'
7 initial investigation had been triggered by a consumer complaint in April of 2008 to the effect
8 that Medi-Cal card holders were being recruited to participate in a prescription fraud scheme
9 ("scheme"). Investigators then conducted an undercover operation in which they learned that
10 Medi-Cal card holders who agreed to participate in the scheme were instructed to contact "Rosa"
11 – who scheduled participants for visits to a physician's office – where they filled out documents
12 providing personal information in exchange for cash payments of \$100 - \$150.00. "Rosa" would
13 then take the large volume of prescriptions thus obtained and fill them at various area pharmacies.

14 C. Pursuant to the DHCS investigation, Rosa was identified as LaShirley P., prosecuted,
15 and convicted of Forgery (Business and Professions Code section 4324 B) and Burglary (Penal
16 Code section 459) in Los Angeles Superior Court on May 13, 2010.

17 D. Board inspectors interviewed Respondent Pharmacy staff, and analyzed a total of
18 436 original prescriptions for drugs including Oxycontin 80 mg and Dilaudid 4 mg – all of
19 which had been filled at Respondent Pharmacy and identified by DHCS investigators as related to
20 the scheme.

21 E. While neither the DHCS investigation, nor the Board's investigation established with
22 certainty that Respondent Megwa, or any other employee of Respondent Pharmacy was a
23 knowing participant in the scheme for which Rosa was convicted, Respondents are linked to said
24 scheme by the following facts:

25 (1) Rosa was well known to the pharmacy staff, and dropped off "a lot" of
26 prescriptions – sometimes as many as 10-15 prescriptions at a time, to be filled.

27 (2) At the time of the subject events, it was the custom and practice of pharmacy
28 staff to give Respondent Megwa all controlled substance prescriptions, and she was the

1 only one who determined whether such prescriptions were to be filled.

2 (3) Rosa appeared to avoid interacting with pharmacy staff other than Respondent
3 Megwa. She appeared to know Respondent's work schedule, and to limit visits to times
4 when Respondent was present.

5 (4) *All* of the 436 scheme-related prescriptions which were filled at Respondent
6 Pharmacy were dispensed by Respondent Megwa.

7 F. Respondent Pharmacy staff interviewed by Board Inspectors indicated that at the time
8 of the subject events, Respondent Pharmacy had no standardized policies and procedures for
9 filling controlled substance prescriptions.

10 G. When asked in April of 2013 by a Board Inspector if she was at all suspicious of the
11 multiple similar prescriptions Rosa was bringing to the pharmacy, Respondent Megwa stated she
12 did not have time to question the prescriptions and did not think it was her place to question the
13 prescriber about what they were prescribing.

14 **Analysis of Prescriptions for Dilaudid and Oxycontin**

15 H. Of the **436** original prescriptions which were reviewed, **73 were for Dilaudid 4mg** –
16 with 35 purportedly issued by a Dr. Callis, and 38 issued by a Dr. Dibdin, and **363 were for**
17 **Oxycontin 80 mg**, with 36 purportedly issued by Dr. Callis, 75 issued by Dr. Dibdin and 252 by
18 Dr. Schwartz. All 436 prescriptions were dispensed by Respondent Megwa.

19 I. Board inspectors contacted and corresponded with Drs. Dibdin and Schwartz, and
20 provided them with samples of the subject prescriptions. Each indicated that he had been a victim
21 of identity theft or been made aware that unknown persons were falsifying prescriptions using his
22 name. Drs. Dibdin and Schwartz both confirmed the prescriptions were forged and not authorized
23 by them. However Dr. Callis - who had retired from medical practice - did not respond to Board
24 attempts to contact him.¹

25 ¹ Due to the volume of prescription documents, and the Inspector's inability to contact Dr.
26 Callis, only prescriptions purportedly issued by Drs. Dibdin and Schwartz for Oxycontin 80 mg
27 and Dilaudid 4 mg (a total of 313) are charged in the Third Cause for discipline below.
28 Additionally, due to uncertainty expressed by Dr. Dibdin about 10 prescriptions purportedly
issued by him from a '6767 Sunset' office address - the 10 prescriptions showing this address
have been excluded. Accordingly, a total of 303 prescriptions are charged in the Third Cause for
(continued...)

1 **Corresponding Responsibility**

2 J. Board inspectors analyzing the 436 prescriptions concluded that Respondents had
3 failed in their corresponding responsibility to verify the medical legitimacy of prescriptions
4 purportedly written by Drs. Callis, Dibdin and Schwartz, because they ignored **key objective**
5 **factors** indicating prescriptions were not legitimate, including but not limited to the following:

6 (1) **Controlled substance prescribing pattern of prescribing physicians**

7 Drs. Callis, Dibdin and Schwartz had an unusually high percentage of controlled substance
8 (vs. non-controlled substance prescriptions) – and an unusually high percentage of these
9 prescriptions were for high abuse, high diversion potential medications.

10 (a) Dilaudid 4mg - Respondent Pharmacy did not dispense *any* prescriptions for
11 this drug between January 2007 and approximately March, 2008. However, in April 2008,
12 Respondent Pharmacy dispensed 68 prescriptions for Dilaudid 4mg – and continued to
13 distribute high volumes of this drug in three months that followed.

14 (b) Oxycontin 80 mg - Respondent Pharmacy dispensed only 12 prescriptions for
15 this drug in 2007. However, in March, 2008, Respondent Pharmacy dispensed 91
16 prescriptions for Oxycontin 80 mg, and continued to distribute high volumes of this drug
17 for the following three months – with the highest volume occurring in July , 2008 – with
18 230 prescriptions.

19 (2) **Proximity of Respondent Pharmacy to patients and prescribers**

20 The typical customer of a retail pharmacy is someone who either lives in the community
21 where the pharmacy is located, or has received a prescription from a physician practicing in or
22 near that community. However, none of the subject prescribers were located within the normal
23 trading area for the pharmacy.

24 (a) **Prescribers – Distance From Pharmacy**

25 (i) Calculating average distances for different addresses appearing for each
26 prescriber - Dr. Callis was located 65 miles away with an approximate travel time of

27 _____
28 (...continued)
 discipline.

1 one hour; Dr. Dibdin was located an average of 60 miles away with an approximate
2 travel time of one hour; and Dr. Schwartz's office was located more than 140 miles
3 from Respondent Pharmacy with an approximate travel time exceeding 2 hours.

4 (ii) The majority of Dr. Schwartz's prescriptions listed an office located in
5 Yuba City, which was located over 400 miles from the location of Respondent
6 pharmacy.

7 (b) **Patients - Distance to pharmacy** - Board Inspectors pulled a sample group of
8 42 patients from the 436 prescriptions. 30 of the 42 patients were located outside of the
9 community normal trading area of Respondent pharmacy, and all 30 had addresses
10 exceeding 60 miles from the pharmacy. Eleven of the remaining 12 patients shared the
11 same address – or had addresses which did not exist.

12 (3) **Suspicious similarity of prescriptions**

13 Prescriptions for all three prescribers were almost identical in appearance.

14 (a) Handwriting - The handwriting and "signatures" on prescriptions purportedly
15 issued by two different prescribers (Dr. Callis and Dr. Dibdin) appear to be that of the
16 same person. The same is true for prescriptions purportedly issued by Dr. Dibdin and Dr.
17 Schwartz.

18 (b) One Size Fits All Prescriptions - Patients were repeatedly prescribed the same
19 or similar drug, dosage, quantity and given the same directions by all three of the
20 prescribers – rather than receiving the typical individualized therapy, 361 of the 363
21 Oxycontin prescriptions (99.45%) were written for a quantity of 90 tablets with directions
22 to take three times daily.

23 (4) **Irregularities on face of prescriptions**

24 (a) Changing Signatures - The signatures of purported prescribers Dr. Dibdin and
25 Dr. Schwartz are inconsistent and appear to have been written by multiple individuals.

26 (b) "Pain! Pain!" Instruction – Approximately 209 prescriptions for Oxycontin
27 purportedly written by Dr. Schwartz show the irregular direction to take "one three times
28 daily for pain! pain!"

1 (c) Serial Numbers - Many prescriptions show nearly consecutive serial numbers
2 (pre-printed numbers on controlled substance prescription pads), but have dates out of
3 sequence.

4 (5) **Manner in which prescriptions were presented**

5 Large numbers of prescriptions for Dilaudid 4mg and Oxycontin 80 mg were presented to
6 the pharmacy at the same time for multiple patients -- and there were instances when over 20
7 prescriptions for Oxycontin 80 mg were dispensed in a single day.

8 K. Looking at the totality of circumstances regarding the 436 prescriptions purportedly
9 issued by Drs. Callis, Dibdin and Schwartz, including but not limited to objective factors set
10 forth above, Respondents should have questioned the legitimacy of the 436 prescriptions
11 presented from these prescribers.

12 L. Respondent Megwa resigned from employment at Respondent Pharmacy on or about
13 June 5, 2009, following a suspension related to events here described.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Failure to Assume Corresponding Responsibility to Assure Legitimacy of Prescriptions)**

16 15. Respondents CVS PHARMACY and MEGWA are subject to disciplinary action
17 under Business and Professions Code section 4300 for unprofessional conduct as defined in
18 section 4301, subdivisions (d) and (o) in conjunction with Health and Safety Code section 11153,
19 subdivision (a) and title 16 California Code of Regulations section 1761, in that, approximately
20 between March 17, 2008 and September 20, 2008, they failed to comply with their corresponding
21 responsibility to ensure that controlled substances were dispensed for a legitimate medical
22 purpose. Specifically, Respondents furnished approximately 436 prescriptions for controlled
23 substances even though "red flags" were present to indicate those prescriptions were not issued
24 for a legitimate medical purpose, as set forth in paragraph 14 above.

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1 SECOND CAUSE FOR DISCIPLINE

2 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
3 **Irregularities, Uncertainties, Ambiguities or Alterations)**

4 16. Respondents CVS PHARMACY and MEGWA are subject to disciplinary
5 action under Business and Professions Code section 4300 for unprofessional conduct as defined
6 in section 4301, subdivisions (j) and (o) for violating title 16, California Code of Regulations,
7 sections 1761(a) and (b), in that approximately between July 17, 2008 and September 26, 2008,
8 on at least 209 instances, they dispensed Oxycontin, a controlled substance, pursuant to
9 prescriptions which contained significant errors, omissions, irregularities, uncertainties and/or
10 ambiguities, which Respondents failed to observe or address in a manner compliant with
11 corresponding responsibility requirements, said irregularities including but not limited to filling
12 209 Oxycontin 80mg prescriptions purportedly written by Dr. Schwartz, each of which had the
13 instruction to take the medication “one three times daily for pain! pain!” - as set forth in
14 paragraph 14 above.

15 THIRD CAUSE FOR DISCIPLINE

16 **(Furnishing Dangerous Drugs Without a Valid Prescription)**

17 17. Respondents CVS PHARMACY and MEGWA are subject to disciplinary action
18 under Business and Professions Code section 4300 for unprofessional conduct as defined in
19 section 4301, subdivisions (j) and (o) in conjunction with section 4059 subdivision (a) in that
20 between March 20, 2008 and September 20, 2008, Respondents filled and dispensed at least 303
21 forged, falsified and unauthorized prescriptions for Oxycontin and Dilaudid as set forth in
22 paragraph 14 above.

23 DISCIPLINARY CONSIDERATIONS

24 18. To determine the degree of penalty to be imposed on Respondent(s), if any,
25 Complainant makes the following additional allegations:

26 **Prior Citation – Respondent CVS Pharmacy #1666**

27 a. On or about March 25, 2010, a representative of the Board inspected and investigated
28 Respondent CVS Pharmacy #1666. Pursuant to that inspection, on March 25, 2010,

Administrative Citation/Assessment of Fine No. CI 200840670 was issued to Respondent for violating Codes and Regulations as set forth below, resulting in the issuance of a \$500.00 fine, which Respondent paid in full. The citation is now final.

Code/Regulation(s) Violated	Description
1. California Code of Regulations (CCR), title 16, § 1716/ § 1716 (a)	Variation from prescription/erroneous or uncertain prescription; no pharmacist shall compound or dispense any prescription which contains any significant error or omission.
2. CCR, title 16, § 1711(e)	Quality assurance program shall advance error prevention.

Prior Citation – Respondent Megwa

a. On or about March 25, 2010 a representative of the Board inspected and investigated Respondent Pharmacy. Pursuant to that inspection, on March 25, 2010, Administrative Citation/Assessment of Fine No. CI 2009 42825 was issued to Respondent Megwa for violating Codes and Regulations as set forth below, resulting in the issuance of a 1300.00 fine, which Respondent paid in full. The citation is now final.

Code/Regulation(s) Violated	Description
1.CCR, title 16, § 1716/§ 1761 (a)	Variation from prescription/erroneous or uncertain prescription; no pharmacist shall compound or dispense any prescription which contains any significant error or omission.
2.CCR, title 16, § 1711(e)	Quality assurance program shall advance error prevention.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 48255, issued to CVS Pharmacy #1666;
2. Revoking or suspending Pharmacist License Number RPH 59389 issued to Susan

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Jenevive Megwa;

3. Ordering Respondents CVS Pharmacy #1666 and Susan Jenevive Megwa to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7/11/16

Virginia Herold

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

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