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

In the Matter of the First Amended Accusation
Against:

| Case No. 7225

**CAREMARK, LLC DBA
CVS/SPECIALTY**
1127 Bryn Mawr Avenue Suite A
Redlands, CA 92374

FIRST AMENDED ACCUSATION

Pharmacy Permit No. PHY 39314,

and

KELLEE DANIELLE RICHARDSON
7805 Calle Carrisa St.
Highland, CA 92346

Pharmacist License No. RPH 74186,

Respondents.

PARTIES

1. Anne Sodergren (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

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2. On or about July 22, 1993, the Board of Pharmacy issued Pharmacy Permit Number PHY 39314 to Caremark, LLC dba CVS/Specialty (Respondent Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on July 1, 2022, unless renewed.

3. On or about December 1, 2015, the Board of Pharmacy issued Pharmacist License Number RPH 74186 to Kellee Danielle Richardson (Respondent Richardson). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2023, unless renewed.

JURISDICTION

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

5. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

6. Section 4300.1 of the Code states:

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

7. Section 4302 of the Code states, "The board may deny, suspend, or revoke any license where conditions exist in relation to any person holding 10 percent or more of the ownership interest or where conditions exist in relation to any officer, director, or other person with management or control of the license that would constitute grounds for disciplinary action against a licensee."

STATUTORY PROVISIONS

8. Section 733, subdivision (a) of the Code states, in part,

A licentiate shall not obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to

disciplinary or administrative action by his or her licensing agency.

9. Section 4301 of the Code states, in relevant part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake.

Unprofessional conduct includes, but is not limited to, any of the following:

...

(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.

10. Section 4113, subdivision (c) states: The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

11. Section 4169 states, in relevant part:

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

...

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

12. Section 4307 of the Code states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

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

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

(b) "Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license" as used in this section and Section 4308 , may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

COST RECOVERY

13. Section 125.3 of the Code states, 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.

DEFINITIONS

14. Cimzia – brand name for *Certolizumab pegol*, is a dangerous drug under Business and Professions Code section 4022. It is used as an anti-inflammatory for Crohn's Disease.

15. Enbrel - brand name for Etanercept and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022. It is typically used to treat arthritis.

16. Entyvio – brand name for Vedolizumab, and is a dangerous drug pursuant to Business and Professions Code section 4022. This medicine is used in adults with ulcerative colitis, or Crohn's disease and is administered as an injection by a healthcare professional.

17. Stelara - brand name for Ustekinumab, and is a dangerous drug pursuant to Business and Professions Code section 4022. It is used to lower inflammation and help with plaque psoriasis, Crohn's Disease and Ulcerative Colitis.

FACTUAL ALLEGATIONS

18. Respondent Pharmacy is a closed-door¹ pharmacy located at 1127 Bryn Mawr Avenue, Suite A, Redlands, California 92374.

19. Since June 22, 2018, Respondent Richardson has been the Pharmacist-in-Charge (PIC) of Respondent Pharmacy. At all relevant times herein, Respondents dispensed prescription drugs to patients via mail or overnight delivery services to the following patients as described below:

Patient NG

20. On or about May 21, 2020, patient NG received a prescription for Stelara 45 mg from her physician. The prescription was sent to a local CVS pharmacy and then transferred to Respondent Pharmacy the same day.

21. On or about May 22, 2020, the doctor's office was notified by Respondent Pharmacy that a prior authorization from the patient's insurance was required.

22. On or about May 26, 2020, the doctor's office notified Respondent Pharmacy of prior authorization approval from NG's health insurance.

23. On or about May 29, 2020, Respondent Pharmacy again requested prior authorization from the doctor's office.

24. On or about June 1, 2020, the doctor's office called NG's insurance and was informed that Respondent Pharmacy was processing the wrong quantity of medication. The doctor's office notified Respondent Pharmacy of the incorrect billing.

25. On or about June 3, 2020, Respondent Pharmacy closed the account claiming a billing issue and lack of information regarding how to properly process the claim. Respondent Pharmacy did not notify NG or the doctor's office prior to cancelling the prescription order.

26. On or about July 6, 2020, NG contacted the doctor's office because she still had not received her medication and had been told by Respondent Pharmacy that approval from the doctor's office was needed to fill the prescription.

¹ All prescriptions were either delivered directly to the consumer or to retail CVS pharmacies. A closed-door pharmacy fills prescriptions remotely and is not a storefront open to the public.

1 27. On or about July 6, 2020, the doctor's office again called NG's insurance for
2 authorization and was informed that Respondent Pharmacy was still processing the wrong
3 quantity. The doctor's office called Respondent Pharmacy and sent a new prescription with the
4 correct medication information as requested by Respondent Pharmacy.

5 28. On or about July 8, 2020, Respondent Pharmacy attempted to process the claim for
6 the initial or loading dose of Stelara and the claim was rejected by insurance. The doctor's office
7 was notified by Respondent Pharmacy that the maintenance dose of Stelara was approved but not
8 the loading dose.

9 29. On or about July 9, 2020, the doctor's office called NG's insurance and was informed
10 that the loading dose was approved with the original prior authorization. However, the approval
11 was only valid until June 24, 2020 and Respondent Pharmacy had not processed the prescription
12 prior to that date. Following the request from the doctor's office, NG's insurance extended the
13 loading dose authorization to July 30, 2020, however Respondent Pharmacy continued to bill the
14 claim under the wrong quantity.

15 30. On or about July 9, 2020, the doctor's office again called Respondent Pharmacy to try
16 to resolve the prior authorization and billing issues. The doctor's office representative spent over
17 an hour on the phone with Respondent Pharmacy, after which time Respondent Pharmacy agreed
18 to contact the insurance company and to call the doctor's office back the next day.

19 31. On or about July 13, 2020, after failing to receive a response from Respondent
20 Pharmacy, the doctor's office contacted NG's insurance company and was informed that the
21 claim was still being billed incorrectly. The lead technician at NG's insurance company emailed
22 Respondent Pharmacy directly with instructions on how to process the claim.

23 32. On or about July 14, 2020, Respondent Pharmacy called NG's insurance and was
24 informed that prior authorization was approved for both the loading and maintenance doses but
25 Respondent Pharmacy was billing improperly. Respondent Pharmacy requested the doctor's
26 office resend the prescription in a different format that was easier for Respondent Pharmacy's
27 internal system to process.

33. On or about July 15, 2020, NG reported to the doctor's office that her condition was worsening without her medication.

34. On or about July 20, 2020, the doctor's office spoke with both NG's insurance and Respondent Pharmacy and resent the prescription to Respondent Pharmacy for a third time. Both parties assured the doctor's office that the prescription would be processed and filled.

35. NG received the filled prescription from Respondent Pharmacy on or about July 23, 2020, more than two months after it was initially requested.

Patient AD

36. Between on or about June 29, 2020 and on or about July 11, 2020, Respondents obstructed AD from obtaining her prescription for Cimzia. The circumstances are as follows:

37. On or about June 29, 2020, patient AD received a new E-script for Cimzia. Respondents did not notify AD regarding "clarification" on the prescription it needed for loading dose until AD contacted the pharmacy multiple times.

38. Respondents did not notify AD about the prior authorization requirements, although it was their policy and procedure to so notify the patient and physicians. Instead, AD was not made aware of the requirement until she called for the status of the prescription.

39. Respondents failed notify AD about the delay in therapy although it was Respondent's policy and procedure to do so. Instead, AD needed to repeatedly call Respondent Pharmacy for the status of her prescription and the reason for obstruction.

40. Respondent Pharmacy's employee billed the prescription incorrectly which resulted in the rejection of the insurance claim and obstruction. AD made a 3-way call with Respondent Pharmacy and her insurance company in an effort to instruct Respondent Pharmacy how to bill the prescription correctly.

41. On or about July 8, 2020, after the medication was approved and Respondent Pharmacy knew how to bill the medication, AD contacted Respondent Pharmacy and scheduled the delivery for July 10, 2020. When AD did not receive her Cimzia on July 10, 2020, she again called Respondent Pharmacy to follow up. Respondent Pharmacy agreed to expedite the delivery for July 11, 2020, since it had not been dispensed on July 8, 2020.

Patient at Pioneers Memorial Healthcare District Outpatient Clinic

42. On or about February 24, 2020, Respondent Pharmacy dispensed an expired dose of Entyvio, RX #5261756. The circumstances are as follows:

43. On or about February 6, 2020, a nurse practitioner at Pioneers Memorial Healthcare District (PMHD) in Brawley, CA prescribed Entyvio to a patient. The medication would be administered at the hospital's outpatient clinic. The prescription was sent to Respondent Pharmacy for filling.

44. On or about February 25, 2020, PMHD clinic received three vials of Entyvio from Respondent Pharmacy. However, one of the three received vials had a recorded expiration date of November 2019.

45. PMHD's pharmacist contacted Respondent Pharmacy and requested a replacement vial. Respondent Pharmacy initially refused to send a replacement vial as its records listed a different expiration date than what was printed on the label. After discussions with Respondent Pharmacy, including sending photographs of the expired vial, Respondent Pharmacy sent a replacement Entyvio vial which was received on February 26, 2020.

Patient FN

46. FN was prescribed Cimzia by her physician that was to be administered via injection every 2 weeks. FN's insurance company required her to obtain the prescription from Respondent Pharmacy.

47. The Cimzia was initially dispensed on or about September 11, 2020. Between December 28, 2020 and August 26, 2021, FN was required to contact Respondent Pharmacy to ensure that her medication was delivered on time every month as required for her medical treatment.

48. Respondent Pharmacy provided FN with a special point of contact person (Lydia) to assist her in obtaining her prescriptions, however that person was not accessible to the patient. The telephone number for the contact person (Christine) would disconnected after 3 rings and there was no means for FN to leave a message. The contact information for the third point of

1 contact person (Ashley) would disconnect when called with no way to leave a message for
2 Ashley.

3 49. On or about August 11, 2021, FN called Respondent Pharmacy and advised that the
4 Simplicity program was authorizing copay assistance for her prescription and a confirmation was
5 given that there were funds on the Simplicity card with the copay assistance program.

6 50. Thereafter, on or about August 14, 2021, FN placed an order for Cimzia for delivery
7 on August 25, 2021. Respondent Pharmacy rejected the order.

8 51. On or about August 25, 2021, FN called Respondent Pharmacy to check the status of
9 the order. FN was advised that there was a billing problem and was transferred to a
10 representative who updated the copay assistance and scheduled the order for shipping. Due to the
11 delay, Respondent Pharmacy set up a same-day delivery to arrive on August 26, 2021. Had FN
12 not called Respondent to inquire about the status of her prescription, the obstruction would likely
13 have been longer and could have caused a delay in FN timely administering her Cimzia.

14 52. Between at least December 2, 2020 and September 15, 2021, Respondent Pharmacy
15 demonstrated a consistent pattern of requiring FN to contact the pharmacy proactively in order to
16 get her Cimzia on time and correct any billing problems to avoid delay in her therapy. During this
17 time period, FN vocalized her frustration about the obstructions by the pharmacy of on-time
18 delivery of her medication, however the problems remained.

19 53. Specifically, FN was promised a delivery of Cimzia on December 2, 2020, however,
20 it was not received. FN contacted Respondent Pharmacy for the medication and it was then
21 scheduled for next day delivery after the issue was escalated to customer service management.

22 54. On or about December 28, 2020, FN placed an online refill order for Cimzia with a
23 delivery date of December 31, 2020. On or about December 31, 2020, FN contacted Respondent
24 Pharmacy where the call was escalated to solve the shipping problems. After multiple telephone
25 calls over a period of several days, the Cimzia prescription was delivered on January 4, 2022 via
26 same day delivery.

27 55. On or about January 29, 2021, FN placed an order for delivery on February 2, 2021.
28 On or about February 2, 2021, FN called Respondent and the call was again escalated. FN

1 expressed her frustration that Respondent Pharmacy was delaying delivery and not
2 communicating with her regarding the issues and delays. The prescription was received on
3 February 3, 2021.

4 56. Between July 20, 2021 and September 15, 2021, FN continued to have problems
5 where Respondent Pharmacy would not correctly bill the Simplicity program for copay assistance
6 and was instead causing actual or potential delays of her prescription delivery by stating that
7 funds were due.

8 **Patient DS**

9 57. DS received a prescription for Enbrel by his physician. DS's insurance company
10 mandated that he obtain the prescription from Respondent Pharmacy. The prescription was
11 received by Respondent on or about June 29, 2021.

12 58. Thereafter, between on or about June 30, 2021 and on or about September 22, 2021,
13 DS was obstructed from obtaining his monthly prescriptions for Enbrel even where he was being
14 proactive in ordering his refills and following up when he did not receive his shipment to avoid
15 delaying or disrupting his therapy.

16 59. On or about July 8, 2021, DS contacted Respondent and provided an Enbrel payment
17 card (for assistance with co-payments) to process his prescription. Due to the use of the Enbrel
18 payment card, shipments would be delayed from the requested date because the order was routed
19 to Benefits Department.

20 60. The Benefits Department claimed that it prioritized prescription order based on the
21 patients' needs, but failed to communicate this to the patients. Instead, DS was led to believe his
22 delivery for Enbrel would be scheduled for his requested date.

23 61. The Benefits Department and/or Patient Service Representative failed to notify DS
24 regarding the delay being caused by billing related issues as required by Respondent Pharmacy.

25 62. On or about August 17, 2021, DS placed an order online for delivery on August 19,
26 2021 or August 20, 2021. On August 20, 2021, DS contacted Respondent after not receiving the
27 medication. The required injection date was August 23, 2021, however DS did not receive the
28 medication until August 27, 2022 and he missed his injection date.

63. On or about September 17, 2021, DS placed an order for delivery on September 21, 2021. DS called the pharmacy and was told there was a shipping problem. DS thereafter received the medication on September 24, 2021.

64. On average, DS made at least 3-4 calls each time for his delivery status. He was usually placed on hold for an hour to speak to a supervisor. If he was not proactive, he would not receive his Enbrel on time and would cause in delay in therapy.

FIRST CAUSE FOR DISCIPLINE

(Obstructing Patients from Obtaining Prescriptions)

65. Respondent Pharmacy and Respondent Richardson are subject to disciplinary action under Business and Professions Code Section 4301 subdivision (o) for violating 733, subdivision (a) in that they obstructed patients NG, AD, FN and DS from obtaining prescription drugs, as set forth in paragraphs 18 through 41 and 46 through 64 above, which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Dispensing Expired Drugs)

66. Respondent Pharmacy is subject to disciplinary action under Code sections 4301, subdivision (j) and 4169, subdivision (a)(4) in that Respondent Pharmacy dispensed and distributed a dangerous drug, which was beyond the expiration date, to Pioneer Memorial Healthcare for patient treatment. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 42 through 45, inclusive, as though set forth in full.

DISCIPLINE CONSIDERATIONS

67. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy, Complainant alleges as follows:

CVS/Specialty, PHY 39314,

a. On or about January 24, 2020, in a prior action, the Board of Pharmacy issued Citation Number CI 2018 81296 based on violations of Business and Professions Code section 733, subdivision (a) (obstructing a patient obtain a legal prescription). Respondent was ordered to pay a fine of \$3,500. That Citation is now final.

OTHER MATTERS

68. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 39314 issued to Respondent Caremark, LLC dba CVS/Specialty, while Kellee Danielle Richardson had been a pharmacist in charge then Kellee Danielle Richardson shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 39314 is placed on probation or until Pharmacy Permit Number PHY 39314 is reinstated if it is revoked.

69. Pursuant to Code section 4307, if disciplined is imposed on License Number RPH 74186 to Kellee Danielle Richardson, then she shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 74186 is placed on probation or until Pharmacist License Number RPH 74186 is reinstated if it is revoked.

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 39314, issued to Caremark, LLC dba CVS/Specialty;

2. Revoking or suspending Pharmacist License Number RPH 74186, issued to Kellee Danielle Richardson;

3. Prohibiting Kellee Danielle Richardson from serving as a manager, administrator,
1. ~~or director, trustee, partner, or fiduciary of a financial institution~~

Permit Number PHY 39314 is placed on probation or until Pharmacy Permit Number PHY 39314 is reinstated if Pharmacy Permit Number PHY 39314 is revoked;

4. Ordering Respondent Caremark, LLC dba CVS/Specialty, and Respondent Kellee Danielle Richardson jointly and severally 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; and,

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1 5. Taking such other and further action as deemed necessary and proper.

2 DATED: 6/12/2022

3 Signature on File

4 ANNE SODERGREN
5 Executive Officer
6 Board of Pharmacy
7 Department of Consumer Affairs
8 State of California
9 *Complainant*

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