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

In the Matter of the Accusation Against**:** **CVS/CAREMARK PCS PENNSYLVANIA MAIL PHARMACY LLC; DBA CVS CAREMARK OR INGENIORX HOME DELIVERY** **THOMAS S. MOFFATT,** **VICE PRESIDENT & SECRETARY** **JEFFREY E. CLARK,** **TREASURE/CHIEF FINANCIAL OFFICER** **SHEELAGH M. BEAULIEU,** **TREASURER/CHIEF FINANCIAL OFFICER** **KIMBERLY M. DESOUSA,** **SECRETARY** **One Great Valley Blvd.** **Wilkes-Barre, PA 18076** **Nonresident Pharmacy Permit No. NRP 680** Respondent.	Case No. 7258 **ACCUSATION**

PARTIES

1. Anne Sodergren (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 July 20, 2005, the Board of Pharmacy (Board) issued Nonresident Pharmacy Permit Number NRP 680 to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as (dba) CVS Caremark or IngenioRx Home Delivery (Respondent), with Thomas S. Moffatt as Vice-President and Secretary, Jeffrey E. Clark, as Treasurer/ Chief Financial Officer, Sheelagh M. Beaulieu, Treasurer/Chief Financial Officer, and Kimberley M. DeSousa, Secretary. The Non-Resident Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein, and will expire July 1, 2023, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300 of the Code states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

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

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5. 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.

6. Code section 4307 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.

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4112 of the Code states, in pertinent part:

> . . .
>
> (d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.
>
> . . .

8. Section 4126.5 of the Code states, in pertinent part:

> (a) A pharmacy may furnish dangerous drugs only to the following:
>
> . . .
>
> (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.
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> …
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> (c) Notwithstanding any other law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

9. Section 4156 of the Code states:

> A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the act would constitute unprofessional conduct under any statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be bound by the laws and regulations that apply to a person licensed under this chapter.

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

> . . .
>
> (c) Gross negligence.
>
> (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, of 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.

. . .

11. Section 4306.5 of the Code provides that "unprofessional conduct" for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

12. Section 4059, subdivision (a), of the Code states:

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.

Health and Safety Code

13. Health and Safety Code section 11152, states:

No person shall write, issue, fill, compound, or dispense a prescription that

does not conform to this division.

14. Health and Safety Code section 11153, subdivision (a), provides that:

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

California Code of Regulations

15. California Code of Regulations (CCR), title 16, section 1716, states:

> Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code. Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

16. CCR, title 16, section 1761, provides that:

> (a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.
>
> (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

Federal Code of Regulations

17. Federal Code of Regulations (CFR), title 21, section 1306.04, provides, in pertinent part, that:

> (a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his 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 prescription.

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Pennsylvania Code

18. Pennsylvania Code of Regulations, title 49, section 25.52, provides, in pertinent part, that:

> (a) A prescription for a controlled substance must be issued for a legitimate medical purpose by a licensed practitioner in the usual course of professional practice. The responsibility for proper prescribing of controlled substances is upon the practitioner but a corresponding responsibility rests with the pharmacist who dispenses the medication and interprets the directions of the prescriber to the patient.
>
> . . .

19. Pennsylvania Code of Regulations, title 49, section 27.18, provides, in pertinent part, that:

> . . .
>
> (t) A pharmacist may only refill a prescription at a reasonable time prior to the time when the contents of the prescription shall be consumed according to prescriber's directions.
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> . . .

DRUG DESCRIPTIONS

20. Xanax is the brand name of the generic drug Alprazolam and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Xanax is indicated for use for the treatment of anxiety.

21. Adderall is the brand name for Amphetamine and Dextroamphetamine salts and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Adderall is indicated for use for the treatment of Attention-Deficit/Hyperactivity Disorder (ADHD).

22. Klonopin is the brand name for Clonazepam and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(7). Klonopin is indicated for use for the treatment of anxiety.

23. Norco is the brand name for Hydrocodone/Acetaminophen (APAP) and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and

Safety Code section 11055, subdivision (b)(1)(I)(ii) Norco is indicated for use for the treatment of pain.

24. Dilaudid and Exalgo are the brand names for Hydromorphone and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J). Dilaudid and Exalgo are indicated for use for the treatment of pain.

25. Vyvanse is the brand name for Lisdexamfetamine and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Vyvanse is indicated for use for the treatment of ADHD.

26. Ritalin is the brand name for Methylphenidate and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(6). Ritalin is indicated for use for the treatment of ADHD.

27. MS Contin and Avinza are the brand names for Morphine Sulfate and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(L). MS Contin and Avinza are indicated for use for the treatment of pain.

28. Roxicodone is the brand name for Oxycodone and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Roxicodone is indicated for use for the treatment of pain.

29. Percocet is the brand name for Oxycodone/Acetaminophen (APAP) and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Percocet is indicated for use for the treatment of pain.

30. Ambien is the brand name for Zolpidem and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(32). Ambien is indicated for use for the treatment of insomnia.

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FACTUAL ALLEGATIONS

31. At all times mentioned herein, Respondent Pharmacy was licensed as nonresident pharmacy and located in Wilkes-Barre, Pennsylvania.

32. The Controlled Substance Utilization Review and Evaluation System (CURES) is California's prescription drug monitoring program. Pharmacies licensed in California are required to report all prescriptions for Schedule II, III, and IV controlled substances to the database every week. On January 1, 2021, this reporting requirement was changed to require Schedules II-V controlled substance prescriptions to be reported not more than one working day after the date a controlled substance is released to a patient. The data can be used by licensed prescribers and pharmacists to evaluate and determine whether their patients are utilizing controlled substances correctly and whether a patient has used multiple prescribers or multiple pharmacies to fill controlled substance prescriptions. Additionally, law enforcement and regulatory agencies, such as the Board, have access to the CURES database for official oversight and investigatory purposes.

33. In July 2021, the Board began an investigation into Respondent. The Board Inspector reviewed the CURES dispensing data reported by Respondent and determined a need to further evaluate the pharmacy's practices relating to the dispensing of controlled substances.

34. The Board Inspector received Respondent's dispensing records from July 6, 2018 through July 6, 2021; the available original prescription documents from that time period; CVS Caremark policies; and prescription notes regarding the requested prescriptions.

35. The Board's inspection of these records identified the following dispensing trends and multiple objective factors of irregularity—or red flags[1]—that should have given Respondent reason to know or suspect that numerous controlled substance prescriptions from July of 2018 through July 2021 were not issued for a legitimate medical purpose.

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[1] Red flags are indicators Pharmacist are responsible for identifying to ensure they only fill prescriptions issued for a legitimate medical purpose. See *In the Matter of California Board of Pharmacy vs. Pacifica Pharmacy and Thang Tran Case* No. 2013-01.)

a. Excessive furnishing/early dispensing of prescriptions

36. Early dispensing of controlled substances occurs when a prescription for a controlled substance is filled before the previously dispensed supplies are exhausted. Early dispensing is a known red flag of abuse of controlled substances.

37. It is most common practice in retail pharmacies to only fill controlled substance prescriptions only when all but a few days of previously dispensed supplies have been exhausted. In order to confirm this practice the Board Investigator surveyed 11 CVS pharmacies located in some of the most common cities to which controlled substances were shipped by Respondent. Three of the 11 pharmacies surveyed stated they do not dispense controlled substances before the date they are due, while eight of the 11 follow the common two day rule.

38. On and between July 6, 2018 through July 6, 2021, Respondent filled/dispensed over 2,100 prescriptions (over 69,000 dosage units) more than seven days early to 549 California patients.

39. The Board Inspector reviewed shipping times for over 20,000 controlled substances in which the delivery date was documented in Respondent's records and found the average shipping time was less than six days. To give Respondent a buffer the Board Inspector allowed Respondent to have seven days total for shipping when reviewing whether a prescription was filled/dispensed early.

40. From review of records provided by Respondent, below is a list of the total extra controlled substances by drug category dispensed early to patients in California:

Drug	Total extra quantity supplied (Tablets or other dosage units)
AMPHETAMINE/DEXTROAMPHETA 20MG	7,302
HYDROCODONE/ACETAMINOPHEN 10-325MG	3,875
AMPHETAMINE/DEXTROAMPHETA 20MG ER	2,962
AMPHETAMINE/DEXTROAMPHETA 10MG	2,769
AMPHETAMINE/DEXTROAMPHETA 30MG ER	2,499
METHYLPHENIDATE HYDROCHLO 36MG ER	2,444
AMPHETAMINE/DEXTROAMPHETA 30MG	2,416
METHAMPHETAMINE HCL 5MG	2,140

VYVANSE 70MG	1,804
AMPHETAMINE/DEXTROAMPHETA 15MG	1,681
METHYLPHENIDATE HYDROCHLO 10MG	1,559
VYVANSE 50MG	1,534
HYDROCODONE/ACETAMINOPHEN 5-325MG	1,495
METHYLPHENIDATE HYDROCHLO 20MG	1,371
OXYCONTIN 40MG	1,320
METHADONE HCL 10MG	1,222
OXYCODONE HYDROCHLORIDE 30MG	1,163
VYVANSE 30MG	1,142
VYVANSE 40MG	1,089
METHYLPHENIDATE HYDROCHLO 54MG ER	947
MORPHINE SULFATE 15MG	903
AMPHETAMINE/DEXTROAMPHETA 10MG ER	895
METHYLPHENIDATE HYDROCHLO 5MG	868
CLONAZEPAM 0.5MG	839
MORPHINE SULFATE 30MG	798
ADDERALL XR 30MG	752
ZENZEDI 20MG	732
METHYLPHENIDATE HYDROCHLO 20MG ER	628
OXYCODONE/ACETAMINOPHEN 10-325MG	624
ADDERALL XR 20MG	590
ALPRAZOLAM 2MG	583
ALPRAZOLAM 1MG	579
LORAZEPAM 1MG	577
ADDERALL 30MG	532
ZOLPIDEM TARTRATE 10MG	526
VYVANSE 20MG	511
QUILLIVANT XR 25MG/5ML	498
VYVANSE 60MG	488
NORCO 10-325MG	456
ADDERALL XR 15MG	427
AMPHETAMINE/DEXTROAMPHETA 25MG ER	406
DEXTROAMPHETAMINE SULFATE 10MG ER	402
RITALIN 10MG	402
MORPHINE SULFATE ER 30MG/12	395
DEXTROAMPHETAMINE SULFATE 15MG ER	381
METHYLPHENIDATE HYDROCHLO 18MG ER	381
DEXMETHYLPHENIDATE HCL 10MG	377
ALPRAZOLAM 0.25MG	360
CLONAZEPAM 1MG	354
OXYCODONE HYDROCHLORIDE 5MG	354
ESZOPICLONE 3MG	340
METHYLPHENIDATE HYDROCHLO 10MG ER	330
MORPHINE SULFATE ER 60MG/12	324

METHYLPHENIDATE HYDROCHLO 27MG ER	312
CONCERTA 36MG	303
ZOLPIDEM TARTRATE 5MG	301
VYVANSE 10MG	300
CONCERTA 54MG	269
OXYCODONE HYDROCHLORIDE 15MG	268
AMPHETAMINE/DEXTROAMPHETA 5MG	264
METHYLPHENIDATE HYDROCHLO 30MG LA	262
ALPRAZOLAM 0.5MG	259
CARISOPRODOL 350MG	249
OXYCONTIN 30MG	243
AMPHETAMINE/DEXTROAMPHETA 15MG ER	242
OXYMORPHONE HYDROCHLORIDE 20MG ER	240
XTAMPZA ER 36MG	240
OXYCODONE HCL ER 40MG	222
LORAZEPAM 0.5MG	207
METHYLPHENIDATE HYDROCHLO 20MG LA	203
ADDERALL XR 25MG	202
MODAFINIL 200MG	201
AMPHETAMINE/DEXTROAMPHETA 5MG ER	192
RITALIN LA 10MG	189
TRAMADOL HCL 50MG	188
DEXTROAMPHETAMINE SULFATE 10MG	172
DEXMETHYLPHENIDATE HCL ER 15MG ER	153
MORPHINE SULFATE ER 100MG/12	153
HYDROMORPHONE HCL ER 16MG ER	150
PERCOCET 10-325MG	136
DIAZEPAM 5MG	134
HYDROMORPHONE HCL 4MG	128
OXYMORPHONE HYDROCHLORIDE 15MG ER	128
DEXMETHYLPHENIDATE HCL 5MG	120
HYDROCODONE BITARTRATE/AC 5-300MG	120
MORPHINE SULFATE ER 15MG/12	120
DIAZEPAM 10MG	112
ADDERALL XR 10MG	110
BELSOMRA 15MG	110
ESZOPICLONE 2MG	106
OXYCONTIN 15MG	102
ZOLPIDEM TARTRATE ER 12.5MG	98
OXYCONTIN 20MG	94
TEMAZEPAM 30MG	89
NUCYNTA ER 150MG	88
ADDERALL XR 5MG	86
DEXMETHYLPHENIDATE HCL ER 20MG ER	80
LORAZEPAM 2MG	80

DEXMETHYLPHENIDATE HCL ER 25MG ER	78
TRIAZOLAM 0.25MG	78
ADDERALL 20MG	74
DEXMETHYLPHENIDATE HCL ER 40MG ER	74
DEXTROAMPHETAMINE SULFATE 5MG	74
CONCERTA 27MG	73
METHYLPHENIDATE HYDROCHLO 30MG CD	71
DAYTRANA 30MG/9HR	69
METHYLPHENIDATE HYDROCHLO 10MG LA	67
MORPHINE SULFATE ER 90MG ER	67
OXYCONTIN 60MG	66
DEXMETHYLPHENIDATE HYDROC 40MG ER	56
CLONAZEPAM 2MG	54
MYDAYIS 50MG	53
DEXMETHYLPHENIDATE HYDROC 30MG ER	52
CONCERTA 18MG	51
DEXMETHYLPHENIDATE HYDROC 2.5MG	44
ADDERALL 10MG	43
QUILLICHEW ER 20MG ER	36
ARMODAFINIL 250MG	34
QUILLICHEW ER 40MG ER	34
FENTANYL 50MCG/HR	33
LUNESTA 3MG	33
ZALEPLON 10MG	32
BELSOMRA 20MG	30
DEXMETHYLPHENIDATE HCL ER 10MG ER	30
ADHANSIA XR 55MG	29
METHYLPHENIDATE HYDROCHLO 40MG CD	26
FENTANYL 100MCG/H	22
DEXMETHYLPHENIDATE HCL ER 30MG ER	18
BUTRANS 10MCG/HR	14
Total	**69,886**

41. Respondent supplied patients with excessive doses of controlled substances by shipping to the patient much more than seven days before previous supplies would have been exhausted.

42. Early dispensing of controlled substances provides patients with excessive drugs that can endanger patients' health by increasing the risks of adverse effects or overdose.

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b. Prescriptions written by Out of State Prescribers

43. Controlled substances may only be prescribed by a California licensed prescriber when dispensed to patients in California.

44. Board Inspector searched the top 100 prescribers of controlled substances filled by Respondent and was able to confirm only three had active unrestricted licenses to prescribe in California during at least part of time for the time period reviewed as part of this investigation. The rest were not confirmed to practice medicine without restrictions in California.

45. Over 6,800 prescriptions were dispensed to patients in California from prescribers listed as having offices in other states.

46. The following were the totals of Schedule II controlled prescriptions filled by Respondent from out of state prescribers:

Drug	Number of prescriptions	Total quantity (Dosage units)
ADDERALL 15MG	3	270
ADDERALL 30MG	6	960
ADDERALL XR 10MG	22	1,830
ADDERALL XR 15MG	33	1,830
ADDERALL XR 20MG	42	3,300
ADDERALL XR 25MG	12	900
ADDERALL XR 30MG	48	3,398
ADDERALL XR 5MG	3	360
ADZENYS XR-ODT 12.5MG	2	180
AMPHETAMINE SULFATE 10MG	6	1,080
AMPHETAMINE/DEXTROAMPHETA 10MG	226	26,438
AMPHETAMINE/DEXTROAMPHETA 10MG ER	47	4,020
AMPHETAMINE/DEXTROAMPHETA 15MG	67	7,995
AMPHETAMINE/DEXTROAMPHETA 15MG ER	51	4,080
AMPHETAMINE/DEXTROAMPHETA 20MG	231	33,898
AMPHETAMINE/DEXTROAMPHETA 20MG ER	110	10,698
AMPHETAMINE/DEXTROAMPHETA 25MG ER	28	1,594
AMPHETAMINE/DEXTROAMPHETA 30MG	126	15,870
AMPHETAMINE/DEXTROAMPHETA 30MG ER	103	10,050
AMPHETAMINE/DEXTROAMPHETA 5MG	49	5,970
AMPHETAMINE/DEXTROAMPHETA 5MG ER	13	930
AMPHETAMINE/DEXTROAMPHETA 7.5MG	7	420
CODEINE SULFATE 30MG	1	28
CODEINE SULFATE 60MG	1	270

CONCERTA 27MG	13	1,110
CONCERTA 36MG	15	1,620
CONCERTA 54MG	5	390
DAYTRANA 30MG/9HR	2	120
DEXMETHYLPHENIDATE 10MG	9	1,050
DEXMETHYLPHENIDATE 5MG	11	1,380
DEXMETHYLPHENIDATE ER 10MG ER	8	510
DEXMETHYLPHENIDATE ER 15MG ER	17	1,590
DEXMETHYLPHENIDATE ER 25MG ER	2	120
DEXMETHYLPHENIDATE ER 5MG ER	7	630
DEXMETHYLPHENIDATE HYDROC 10MG ER	8	510
DEXMETHYLPHENIDATE HYDROC 2.5MG	11	1,800
DEXMETHYLPHENIDATE HYDROC 20MG ER	10	990
DEXTROAMPHETAMINE SULFATE 10MG	25	3,360
DEXTROAMPHETAMINE SULFATE 10MG ER	12	2,100
DEXTROAMPHETAMINE SULFATE 15MG ER	8	900
DEXTROAMPHETAMINE SULFATE 5MG	20	2,250
DEXTROAMPHETAMINE SULFATE 5MG ER	1	180
EMBEDA 20-0.8MG	1	180
FENTANYL 12MCG/HR	3	30
FENTANYL 25MCG/HR	5	55
FENTANYL 50MCG/HR	5	70
FENTANYL 75MCG/HR	2	60
FOCALIN 2.5MG	1	90
FOCALIN 5MG	1	90
FOCALIN XR 10MG	1	60
HYDROCODONE/AC 10-325MG	2	400
HYDROCODONE/AC 7.5-300	1	180
HYDROCODONE/HO 5-1.5/5	12	21,600
HYDROCODONE/ACETAMINOPHEN 10-325MG	83	18,350
HYDROCODONE/ACETAMINOPHEN 5-325MG	49	4,586
HYDROCODONE/ACETAMINOPHEN 7.5-325	3	188
HYDROCODONE/ACETAMINOPHEN 7.5-325M	22	2,506
HYDROCODONE/IBUPROFEN 7.5/200	12	360
HYDROMORPHONE 2MG	3	268
HYDROMORPHONE 8MG	4	2,070
HYDROMORPHONE HYDROCHLORI 32MG ER	4	720
HYSINGLA ER 40 MG	3	90
JORNAY PM 20MG ER	1	14
JORNAY PM 40MG ER	1	30
LEVORPHANOL TARTRATE 2MG	1	30
METHADONE 5MG	3	1,185
METHYLPHENIDATE HYDROCHLO 10MG	44	6,630
METHYLPHENIDATE HYDROCHLO 10MG CD	2	180

METHYLPHENIDATE HYDROCHLO 10MG ER	2	360
METHYLPHENIDATE HYDROCHLO 10MG LA	6	525
METHYLPHENIDATE HYDROCHLO 18MG ER	36	3,571
METHYLPHENIDATE HYDROCHLO 20MG	43	5,690
METHYLPHENIDATE HYDROCHLO 20MG CD	1	90
METHYLPHENIDATE HYDROCHLO 20MG ER	3	360
METHYLPHENIDATE HYDROCHLO 20MG LA	5	390
METHYLPHENIDATE HYDROCHLO 27MG ER	31	1,890
METHYLPHENIDATE HYDROCHLO 30MG CD	3	180
METHYLPHENIDATE HYDROCHLO 30MG LA	3	245
METHYLPHENIDATE HYDROCHLO 36MG ER	56	4,448
METHYLPHENIDATE HYDROCHLO 40MG CD	4	360
METHYLPHENIDATE HYDROCHLO 40MG LA	5	450
METHYLPHENIDATE HYDROCHLO 54MG ER	24	2,010
METHYLPHENIDATE HYDROCHLO 5MG	28	4,410
METHYLPHENIDATE HYDROCHLO 60MG CD	3	270
MORPHINE SULFATE 15MG	3	240
MORPHINE SULFATE 30MG	1	84
MORPHINE SULFATE ER 15MG/12	8	1,518
MORPHINE SULFATE ER 30MG/12	8	716
MORPHINE SULFATE ER 60MG/12	1	360
MYDAYIS 25MG	1	90
MYDAYIS 50MG	5	330
NORCO 10-325MG	1	540
NUCYNTA 75MG	2	540
NUCYNTA ER 100MG	1	180
OPIUM 10MG/ML	1	270
OXYCODONE ER 10MG	1	20
OXYCODONE ER 20MG	1	180
OXYCODONE 10MG	23	2,960
OXYCODONE 15MG	41	3,810
OXYCODONE 20MG	22	2,556
OXYCODONE 30MG	8	860
OXYCODONE 5MG	35	7,495
OXYCODONE/ACETAMINOPHEN 10-325MG	70	9,957
OXYCODONE/ACETAMINOPHEN 5-325MG	48	6,671
OXYCODONE/ACETAMINOPHEN 7.5-325	5	580
OXYCONTIN 10MG	1	60
OXYCONTIN 20MG	3	360
OXYCONTIN 40MG	2	240
OXYCONTIN 60MG	1	60
OXYMORPHONE 10MG ER	1	40
OXYMORPHONE 15MG ER	6	360
QUILLICHEW ER 20MG ER	2	180

QUILLICHEW ER 40MG ER	2	180
QUILLIVANT XR 25MG/5ML	2	1,440
VYVANSE 10MG	12	1,080
VYVANSE 20MG	33	2,534
VYVANSE 30MG	60	4,844
VYVANSE 40MG	74	4,722
VYVANSE 50MG	87	6,735
VYVANSE 60MG	50	3,780
VYVANSE 70MG	99	8,041
ZENZEDI 20MG	1	30
Total	**2665**	**316,893**

47. The Board Inspector found that Respondent was shipping these out of state prescriptions to California patients without verification that the prescribers held active licenses in California.

48. Respondent did not provide the Board Inspector any documentation to show that a pharmacist interviewed each patient to determine the authenticity of the prescriptions written by out of state prescribers.

49. On or around August 24, 2021, Board Inspector notified Respondent that filling prescriptions for prescribers not licensed in California is illegal, and there is no exception to the law.

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50. In order to determine if Respondent had changed their practice of dispensing Schedule II controlled substances from out of state prescribers, Board Inspector reviewed Respondent's CURES reporting for the period of October 1, 2021 through November 29, 2021. As a result of the review the Board Inspector found the following Schedule II controlled substances were dispensed to California patients pursuant to prescriptions from prescribers who were unlicensed in California:

Date	Number	Patient	Patient City	Drug	Qty	Prescriber	Prescriber State	Prescriber CA license/status
10/07/21	135724176	PF	Needles	oxycodone 5 mg	60	C.R.	AZ	expired
11/04/21	136491108	PF	Needles	oxycodone 5 mg	60	C.R.	AZ	expired
10/21/21	749311354	AG	Los Angeles	Adderall XR 15 mg	30	K.C.	MA	None
11/08/21	750716149	TH	Los Angeles	amphetamine 10 mg	180	S.S.	NY	None
11/09/21	137117404	EL	San Diego	amphetamine 10 mg	60	A.K.	AZ	None

c. Variation from prescriptions:

51. As part of the investigation the Board Inspector reviewed pharmacy records and original prescription documents, and found that Respondent deviated from the prescription instruction and dispensed 55 prescriptions against prescribers' orders.

52. All 55 prescriptions that were dispensed against prescribers orders had clear prescriber instructions that the prescription "must last" a certain amount of time, or have a "maximum" amount per day that could be taken. Respondent dispensed these prescriptions early, and against prescribers orders.

53. Respondent did not provide anything to the Board Inspector to review that had any indication or notation of prior prescriber consent to deviate from the prescribers' orders.

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CAUSES FOR DISCIPLINE

FIRST CAUSE FOR DISCIPLINE

(Requirements for Dispensing Controlled Substance Prescriptions)

54. Respondent is subject to disciplinary action for failing to comply with the requirements for dispensing controlled substance prescriptions, pursuant to Health and Safety Code sections 11164 and 11162.1, subdivision (a), Code section 4059, subdivision (a), CCR, title 16, section 1761, and CFR, title 21, section 1306.4, by and through Code sections 4301, subdivisions (j) and (o), and 4156 as set forth in more detail above in paragraphs 31 through 53.

SECOND CAUSE FOR DISCIPLINE

(Failure to Exercise or Implement Corresponding Responsibility)

55. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (d), (j), and (o); 4306.5, subdivisions (a), (b), (c), and (d); 4126.5 and 4156; in conjunction with Health and Safety Code sections 11152, and 11153, subdivision (a); CCR, title 16, section 1761; and CFR, title 21, section 1306.04, in that Respondent failed to exercise or implement its best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances or dangerous drugs, or with regard to the provision of services, as set forth in more detail above in paragraphs 31 through 53.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence)

56. Respondent is subject to disciplinary action for engaging in unprofessional conduct pursuant to Code section 4301, subdivision (c), for gross negligence, in that it operated in a manner that deviated from the standard of safe pharmacy practice as set forth in more detail above in paragraphs 31 through 53.

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FOURTH CAUSE FOR DISCIPLINE

(Clearly Excessive Furnishing of Controlled Substances)

57. Respondent is subject to disciplinary action for engaging in unprofessional conduct pursuant to Code sections 4301, subdivision (d), 4126.5, and Health and Safety Code section 11153, subdivision (a), for clearly excessive furnishing of controlled substances, as set forth in more detail above in paragraphs 31 through 53.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Violation of Applicable Pennsylvania Laws and Regulations Governing Pharmacy)

58. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, by and through Code section 4156, in that Respondent failed to comply with specific Pennsylvania regulation sections as follows:

a. Pennsylvania Code, Title 49, section 25.52, in that Respondent dispensed over 4,800 controlled substance prescriptions with patterns of irregularities and red flags of abuse without ensuring the prescriptions were issued for a legitimate medical purpose in the usual course of professional practice.

b. Pennsylvania Code, Title 49, section 27.18, subdivision (t), in that Respondent dispensed over 2,100 schedule II-V controlled substance prescriptions early (at least seven days before due, but almost all were 10 days before due), and at least 55 prescriptions that were dispensed early in conflict with prescribers orders.

c. The facts and circumstances are described in more detail above in paragraphs 31-53, above.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

59. Respondent is subject to disciplinary action under Code sections 4301, in that Respondent committed unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations as set forth in more detail above in paragraphs 31 through 58.

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OTHER MATTERS

60. Pursuant to Code section 4307, if discipline is imposed on Non Resident Pharmacy Permit Number NRP 680, issued to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC to do business a CVS Caremark or IngenioRx Home Delivery, Thomas S. Moffatt, Jeffrey E. Clark, Sheelagh M. Beaulieu, and Kimberley M. DeSousa shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Nonresident Pharmacy Permit Number NRP 680, issued CVS Caremark PCS Pennsylvania Mail Pharmacy LLC dba CVS Caremark is placed on probation or until the Nonresident Pharmacy Permit Number NRP 680 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 Nonresident Pharmacy Permit Number NRP 680, issued to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or IngenioRx Home Delivery;

2. Prohibiting CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or IngenioRx Home Delivery, Thomas S. Moffatt, Jeffrey E. Clark, Sheelagh M. Beaulieu, and Kimberley M. DeSousa from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Nonresident Pharmacy Permit Number NRP 680 is placed on probation or until Nonresident Pharmacy Permit Number NRP 680 is reinstated if Nonresident Pharmacy Permit Number NRP 680 issued to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or IngenioRx Home Delivery is revoked;

3. Ordering CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or IngenioRx Home Delivery 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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4. Taking such other and further action as deemed necessary and proper.

DATED: 10/10/2022

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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