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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 7290

14 **SEPULVEDA PHARMACY, INC.,**
15 **PAULETTE AZAD, PHARMACIST-IN-**
CHARGE, CEO, SECRETARY, CFO,
16 **DIRECTOR, AND OWNER**

STATEMENT OF ISSUES

17 **Community Pharmacy License Applicant**

18 Respondent.

19 **PARTIES**

20 1. Anne Sodergren (“Complainant”) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy (“Board”), Department of Consumer
22 Affairs.

23 2. On or about January 21, 2022, the Board received an Application for a Community
24 Pharmacy License (“Application”) from Sepulveda Pharmacy, Inc. (“Respondent”), Paulette
25 Azad (“Azad”), Pharmacist-in-Charge, CEO, Secretary, CFO, Director, and Owner. On or about
26 January 18, 2022, Azad, on behalf of Respondent, certified under penalty of perjury to the
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1 truthfulness of all statements, answers, and representations in the application. The Board denied
2 the application on April 1, 2022.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Board, under the authority of the
5 following laws. All section references are to the Business and Professions Code (“Code”) unless
6 otherwise indicated.

7 4. Section 4111 of the Code states, in pertinent part:

8 (a) Except as otherwise provided in subdivision (b), (d), or (e), the board shall
9 not issue or renew a license to conduct a pharmacy to any of the following:

10 (1) A person or persons authorized to prescribe or write a prescription, as
11 specified in Section 4040, in the State of California.

12 (2) A person or persons with whom a person or persons specified in paragraph
13 (1) shares a community or other financial interest in the permit sought.

14 (3) Any corporation that is controlled by, or in which 10 percent or more of the
15 stock is owned by a person or persons prohibited from pharmacy ownership by
16 paragraph (1) or (2).

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18 **STATUTORY PROVISIONS**

19 5. Section 4035 of the Code states:

20 “Person” includes, but is not limited to, firm, association, partnership,
21 corporation, limited liability company, state governmental agency, trust, or political

22 6. Section 4040 of the Code states:

23 (a) “Prescription” means an oral, written, or electronic transmission order that is
24 both of the following:

25

26 (2) Issued by a physician, dentist, optometrist, doctor of podiatric medicine,
27 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is
28 issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-
midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this
state, or pursuant to Section 4052.1, 4052.2, or 4052.6 by a pharmacist licensed in
this state.

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FACTUAL ALLEGATIONS

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2 7. In its Application, Respondent disclosed that Azad is the CEO, Secretary, CFO,
3 Director, Pharmacist-in-Charge, Director, and sole shareholder of Respondent. In an Individual
4 Personal Affidavit submitted with the Application, Azad disclosed the identity of her spouse, N.
5 S. Also in support of her application, Azad produced a Commercial Lease Agreement between
6 Respondent and Nerve MD, Inc., for the retail space Respondent intends to occupy. N. S. is a
7 medical doctor, and thus a prescriber, and the owner of Nerve MD, Inc.

8 8. On February 4, 2022, the Board sent a letter to Respondent informing Respondent
9 that it was unable to grant Respondent’s Application due to the proposed ownership structure of
10 Respondent. Specifically, the letter stated that “the spouse of [Azad], 100% owner of
11 [Respondent] has been identified as a prescriber.” The letter further stated that the proposed
12 ownership of the pharmacy is prohibited under section 4111 of the Code since “the applicant-
13 owner’s spouse must also be compliant with [Code section] 4111.” The Board gave Respondent
14 30 days to propose a different ownership structure that would comply with section 4111 of the
15 Code.

16 9. On February 11, 2022, Respondent and N. S. entered into a Transmutation
17 Agreement. This Transmutation Agreement states the following:

18 [Azad] desires to change the characterization of the corporation, Sepulveda
19 Pharmacy Inc. from community property to separate property to be solely owned
hereinafter by [Azad].

20 [N. S.] and [Azad] each acknowledge that each stand in a fiduciary relationship with
21 each other, that he and she freely and voluntarily enters into this agreement, and he
22 and she acknowledge that he and she are under no form of duress or any other form of
23 “undue influence” (as that term is used by California courts In determining the
enforceability of any instrument purporting to be a written transmutation pursuant to
California Family Code sections 850, 851, and 852. and case law thereunder) from or
caused by [Azad] or any third-party in so transmuting and so waiving as provided by
this Agreement. [N. S.] acknowledges that [Azad’s] prior and future years of
devotion to him is legally sufficient consideration for him to enter into this
Agreement.

25 [N. S.] makes this transmutation, with full knowledge of all relevant facts relating to
26 the characterization and ownership of the asset(s) being transmuted by this
Agreement, as well as having a complete understanding of the legal significance and
27 legal consequences of so doing. [N. S.] acknowledges having ample and adequate
opportunity to consult with and to receive legal advice from any attorney of his
28 choosing.

1 [N. S.] and [Azad] intend and acknowledge that all statements of fact and statements
2 of Agreement provided herein are to be deemed conclusively true as between the
parties and their successors in interest, pursuant to California Evidence Code section
822

3 10. On April 1, 2022, the Board sent a letter to Respondent informing Respondent that
4 the Application was denied. The denial letter states the following:

5 Transmutation or post-nuptial agreements between spouses are generally effective as
6 to community or separate property interests of the spouses upon the dissolution of
7 marriage or death of one or both spouses. However, the 'community or financial
8 interest' referenced in [Code] section 4111, subdivision (a)(2), is not exclusive to
9 marital property. Spouses contract toward each other obligations of mutual respect,
fidelity, and support. (Fam. Code section 720.) Even if the specific pharmacy
property is transmuted or agreed between the spouses to be separate property of one
spouse, that agreement does not remove the community or financial interests between
the spouses while they are still married.

10 There are significant public protection and policy reasons for this law, including
11 removing conflicts of interest from the prescriber and the pharmacy. When the
12 prescriber is determining which drug to prescribe, the amount of the drug to
13 prescribe, and other factors considered when writing a prescription, they should not
also be thinking about the financial impact to their spouse's pharmacy. Additionally,
the pharmacy has a duty to exercise its corresponding responsibility to ensure that
prescriptions have a legitimate medical purpose.

14 **CAUSE FOR DENIAL OF APPLICATION**

15 (Prohibited Ownership Structure)

16 11. Respondent's application is subject to denial under sections 4035, 4040, and 4111 in
17 that the proposed ownership of Respondent results in the prescriber spouse of the 100%
18 shareholder of Respondent having a community or other financial interest in the permit sought.
19 The spouse of Azad (Respondent's 100% shareholder and owner), is a person authorized to
20 prescribe under Code section 4040. Complainant refers to and by this reference incorporates the
21 allegations set forth above in paragraphs 7 through 10, inclusive, as though set forth fully herein.

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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. Denying the application of Sepulveda Pharmacy, Inc., Paulette Azad, Pharmacist-in-Charge, CEO, Secretary, CFO, Director, and Owner, for a Community Pharmacy License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/18/2022

Signature on File _____

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

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