

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

In the Matter of the Accusation Against:

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

Non-Resident Pharmacy Permit No. NRP 1593

and

**PCM VENTURE 1 LLC DBA
PCM VENTURE 1 LLC
Peter Ax, Member
5201 Green Street, Suite 255
Murray, UT 84123**

Non-Resident Pharmacy Permit No. NRP 792

Respondents.

Case No. 5998

OAH No. 2018090429

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR
PUBLIC REPROVAL**

[Bus. & Prof. Code § 495]

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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 March 7, 2019.

It is so ORDERED on February 5, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", written over a horizontal line.

By

Victor Law, R.Ph.
Board President

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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DISCIPLINARY ORDER FOR
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16 **and**

[Bus. & Prof. Code § 495]

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18 **PCM VENTURE 1 LLC**
19 **Peter Ax, Member**
5201 Green Street, Suite 255
Murray, UT 84123

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

21 Respondents.
22

23
24 In the interest of a prompt and speedy settlement of this matter, consistent with the public
25 interest and responsibilities of the Board of Pharmacy, Department of Consumer Affairs, the
26 parties hereby agree to the following Stipulated Settlement and Disciplinary Order for Public
27 Reproval to be submitted to the Board for approval as the final disposition of the Accusation.
28

1 **PARTIES**

2 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Xavier Becerra, Attorney General of the State of California, by Joshua A. Room, Supervising
5 Deputy Attorney General.

6 2. PCM Venture 1 LLC dba Quikmed and PCM Venture 1 LLC dba PCM Venture 1
7 LLC (Respondents) are represented in this proceeding by attorney Alan Castillo, Esq., whose
8 address is: The SoCal Law Network, 23152 Verdugo Drive, Suite 201, Laguna Hills, CA 92653.

9 **JURISDICTION**

10 3. On or about May 10, 2016, the Board of Pharmacy issued Non-Resident Pharmacy
11 Permit Number NRP 1593 to PCM Venture 1 LLC dba Kwikmed. The Permit was in full force
12 and effect at all times relevant to the charges in Accusation No. 5998 and will expire on May 1,
13 2019, unless renewed. On or about June 11, 2007, the Board of Pharmacy issued Non-Resident
14 Pharmacy Permit Number NRP 792 to PCM Venture 1 LLC dba PCM Venture 1 LLC. The
15 Permit was in full force and effect at all times relevant to the charges in Accusation No. 5998.
16 The Permit was canceled on or about May 17, 2016.

17 4. Accusation No. 5998 was filed before the Board and is currently pending against
18 Respondents. The Accusation and all other statutorily required documents were properly served
19 on Respondents on January 23, 2018. Respondents timely filed a Notice of Defense. A copy of
20 Accusation No. 5998 is attached as exhibit A and incorporated herein by reference.

21 **ADVISEMENT AND WAIVERS**

22 5. Respondents have carefully read, fully discussed with counsel, and understand the
23 charges and allegations in Accusation No. 5998. Respondents have also carefully read, fully
24 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
25 Order for Public Reproval.

26 6. Respondents are fully aware of their legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
28 their own expense; the right to confront and cross-examine the witnesses against them; the right

1 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
2 compel the attendance of witnesses and the production of documents; the right to reconsideration
3 and court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 7. Respondents voluntarily, knowingly, and intelligently waive and give up each and
6 every right set forth above.

7 CULPABILITY

8 8. Respondents admit the truth of each and every charge and allegation in Accusation
9 No. 5998. Respondents agree that Non Resident Pharmacy Permit No. NRP 1593 and Non
10 Resident Pharmacy Permit No. 792 are each and severally subject to discipline and they agree to
11 be bound by the Disciplinary Order below.

12 RESERVATION

13 9. The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the Board or other professional licensing agency is
15 involved, and shall not be admissible in any other criminal or civil proceeding.

16 MITIGATING FACTS

17 10. Respondents have acknowledged and accepted full responsibility for the errors that
18 led to the filling of these prescriptions, and have taken steps to prevent any recurrence.

19 CONTINGENCY

20 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
21 understands and agrees that counsel for Complainant and the staff of the Board may communicate
22 directly with the Board regarding this stipulation and settlement, without notice to or participation
23 by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that
24 they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board
25 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
26 the Stipulated Settlement and Disciplinary Order for Public Reprimand shall be of no force or
27 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
28 and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this stipulation, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

14. In consideration of the foregoing, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Non Resident Pharmacy Permit No. NRP 1593 and Non Resident Pharmacy Permit No. NRP 792, issued to Respondents, shall be publicly reapproved by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No. 5998, attached as exhibit A.

Civil Penalty. Respondents shall be jointly and severally liable for and responsible for paying to the Board a civil penalty of \$275,000.00, with the full amount of the civil penalty due and payable within one (1) year of the effective date of this decision. Failure to timely pay the civil penalty in full shall be considered unprofessional conduct and shall subject Respondents to further license discipline. In addition, if Respondents fail to make full payment within one (1) year, Respondents shall not be allowed to renew any existing license or receive any new license until Respondents have made payment in full.

Respondent understands and agrees that this civil penalty is an administrative fine pursuant to 11 U.S.C. § 523(a)(7), and as such is not dischargeable in bankruptcy.

///

ACCEPTANCE

I am authorized to sign on behalf of Respondent PCM Venture 1 LLC dba Kwikmed. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and have fully discussed it with my attorney, Alan Castillo. I understand the stipulation and the effect it will have on my Non Resident Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

Peter Ax, Member, for
PCM VENTURE 1 LLC dba KWIKMED
Respondent

I am authorized to sign on behalf of Respondent PCM Venture 1 LLC dba PCM Venture 1 LLC. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and have fully discussed it with my attorney, Alan Castillo. I understand the stipulation and the effect it will have on my Non Resident Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

Peter Ax, Member, for
PCM VENTURE 1 LLC dba PCM VENTURE 1 LLC
Respondent

I have read and fully discussed with representatives for Respondents the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

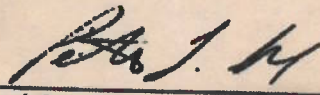
DATED: _____

ALAN CASTILLO, ESQ.
The SoCal Law Network
Attorneys for Respondents

ACCEPTANCE

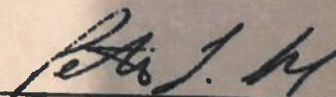
I am authorized to sign on behalf of Respondent PCM Venture 1 LLC dba Kwikmed. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reapproval and have fully discussed it with my attorney, Alan Castillo. I understand the stipulation and the effect it will have on my Non Resident Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Reapproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 12/28/18


Peter Ax, Member, for
PCM VENTURE 1 LLC dba KWIKMED
Respondent

I am authorized to sign on behalf of Respondent PCM Venture 1 LLC dba PCM Venture 1 LLC. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reapproval and have fully discussed it with my attorney, Alan Castillo. I understand the stipulation and the effect it will have on my Non Resident Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Reapproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 12/28/18


Peter Ax, Member, for
PCM VENTURE 1 LLC dba PCM VENTURE 1 LLC
Respondent

I have read and fully discussed with representatives for Respondents the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reapproval. I approve its form and content.

DATED: 1/3/2019


ALAN CASTILLO, ESQ.
The SoCal Law Network
Attorneys for Respondents

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:

1/8/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General


JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5998

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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A C C U S A T I O N

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

15 **and**

16 **PCM VENTURE 1 LLC DBA**
17 **PCM VENTURE 1 LLC**
Peter Ax, Member
18 **5201 Green Street, Suite 255**
Murray, UT 84123

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

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

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

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

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

8 JURISDICTION

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

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

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

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

22 STATUTORY AND REGULATORY PROVISIONS

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

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

28 ///

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

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

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

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

23 DANGEROUS DRUGS

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

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

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

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

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

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

FACTUAL SUMMARY

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

“Henceforth and without limitation as to time:

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

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

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

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

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

9
10 FIRST CAUSE FOR DISCIPLINE

11 (Dispensing or Furnishing Invalid Internet Prescriptions)

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

23
24 SECOND CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

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

28 ///

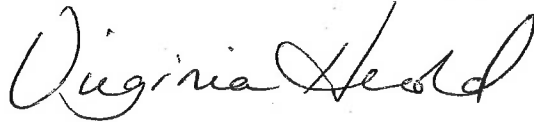
1 PRAYER

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

- 4 1. Revoking or suspending Non Resident Pharmacy Permit Number NRP 1593, issued
5 to PCM Venture 1 LLC dba PCM Venture 1 LLC dba Kwikmed (Respondent Kwikmed);
6 2. Revoking or suspending Non Resident Pharmacy Permit Number NRP 792, issued to
7 PCM Venture 1 LLC dba PCM Venture 1 LLC. (Respondent PCM);
8 3. Ordering Respondents to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
10 4. Taking such other and further action as is deemed necessary and proper.

11
12 DATED: _____

1/3/18



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

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