

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

In the Matter of the Accusation Against:

**QUALITY SPECIALTY PHARMACY, INC.,
DBA QUALITY SPECIALTY PHARMACY**

Pharmacy Permit No. PHY 50710;

and

VLADISLAV TENENBAUM

Pharmacist License No. RPH 68507,

Respondents

Agency Case No. 6444

DECISION AND ORDER

The attached Stipulated Surrender of License Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on March 26, 2020.

It is so ORDERED on February 25, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe
Board President

XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
JOSHUA B. EISENBERG
Deputy Attorney General
State Bar No. 279323
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6115
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 6444

**QUALITY SPECIALTY PHARMACY,
INC., DBA QUALITY SPECIALTY
PHARMACY
2233 W. Lomita Blvd.
Lomita, CA 90717**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Pharmacy Permit No. PHY 50710

**(RESPONDENT QUALITY SPECIALTY
PHARMACY, INC., DBA QUALITY
SPECIALTY PHARMACY)**

and

**VLADISLAV TENENBAUM
2685 Euclid Heights Blvd., #1
Cleveland Heights, OH 44106**

Pharmacist License No. RPH 68507

Respondents.

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

PARTIES

1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in

1 this matter by Xavier Becerra, Attorney General of the State of California, by Joshua B.
2 Eisenberg, Deputy Attorney General.

3 2. Quality Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy (Respondent) is
4 represented in this proceeding by attorney Herb L. Weinberg, whose address is 1990 S. Bundy
5 Drive, Suite 777, Los Angeles, CA 90025.

6 3. On or about August 17, 2011, the Board issued Pharmacy Permit No. PHY 50710 to
7 Respondent. The Pharmacy Permit was in full force and effect at all times relevant to the charges
8 brought in Accusation No. 6444. Respondent's Pharmacy Permit expired on August 1, 2019, and
9 has not been renewed.

10 **JURISDICTION**

11 4. Accusation No. 6444 was filed before the Board, and is currently pending against the
12 Respondent. The Accusation and all other statutorily required documents were properly served
13 on Respondent on October 7, 2019. Respondent timely filed a Notice of Defense contesting the
14 Accusation. A copy of Accusation No. 6444 is attached as Exhibit A and incorporated by
15 reference.

16 **ADVISEMENT AND WAIVERS**

17 5. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 6444. Respondent has also carefully read, fully
19 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
20 Order.

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

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

1 **CULPABILITY**

2 8. Respondent understands that the charges and allegations in Accusation No. 6444, if
3 proven at a hearing, constitute cause for imposing discipline upon its Pharmacy Permit.

4 9. For the purpose of resolving the Accusation without the expense and uncertainty of
5 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
6 basis for the charges in the Accusation and that those charges constitute cause for discipline.
7 Respondent hereby gives up its right to contest that cause for discipline exists based on those
8 charges.

9 10. Respondent understands that by signing this stipulation, it enables the Board to issue
10 an order accepting the surrender of its Pharmacy Permit without further process.

11 **CONTINGENCY**

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

21 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
22 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
23 thereto, shall have the same force and effect as the originals.

24 13. This Stipulated Surrender of License and Order is intended by the parties to be an
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
27 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
28

1 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
2 executed by an authorized representative of each of the parties.

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

5 **ORDER**

6 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 50710, issued to Quality
7 Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy is surrendered and accepted by the
8 Board.

9 1. The surrender of Respondent's Pharmacy Permit, and the acceptance of the
10 surrendered permit by the Board shall constitute the imposition of discipline against Respondent.
11 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
12 license history with the Board.

13 2. Respondent shall lose all rights and privileges as a pharmacy in California as of the
14 effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board its pocket license and, if any was
16 issued, its wall certificate on or before the effective date of the Decision and Order.

17 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
18 California, the Board shall treat it as a new application for licensure. Respondent must comply
19 with all the laws, regulations and procedures for licensure in effect at the time the application or
20 petition is filed, and all of the charges and allegations contained in Accusation No. 6444 shall be
21 deemed to be true, correct and admitted by Respondent when the Board determines whether to
22 grant or deny the application or petition.

23 5. Respondent shall pay the agency its costs of investigation and enforcement in the
24 amount of \$22,799.75 prior to issuance of a new or reinstated license. Respondents shall be
25 jointly and severally liable for the payment of these costs.

26 6. If Respondent should ever apply or reapply for a new license or certification, or
27 petition for reinstatement of a license, by any other health care licensing agency in the State of
28 California, all of the charges and allegations contained in Accusation No. 6444 shall be deemed to

1 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
2 other proceeding seeking to deny or restrict licensure.

3 7. Respondent shall not apply for licensure or petition for reinstatement for three (3)
4 years from the effective date of the Board's Decision and Order.

5 **ACCEPTANCE**

6 I have carefully read the above Stipulated Surrender of License and Order and have fully
7 discussed it with my attorney. I understand the stipulation and the effect it will have on my
8 Pharmacy Permit. I enter into this Stipulated Surrender of License and Order voluntarily,
9 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
10 Pharmacy.

11
12 DATED: _____

13 QUALITY SPECIALTY PHARMACY,
14 INC., DBA QUALITY SPECIALTY
15 PHARMACY
16 *Respondent*

17 I have read and fully discussed with Respondents Quality Specialty Pharmacy, Inc., dba
18 Quality Specialty Pharmacy the terms and conditions and other matters contained in this
19 Stipulated Surrender of License and Order. I approve its form and content.

20 DATED: _____

21 HERB L. WEINBERG
22 *Attorney for Respondent*

1 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
2 other proceeding seeking to deny or restrict licensure.


3 7. Respondent shall not apply for licensure or petition for reinstatement for three (3)
4 years from the effective date of the Board's Decision and Order.

5 ACCEPTANCE

6 I have carefully read the above Stipulated Surrender of License and Order and have fully
7 discussed it with my attorney. I understand the stipulation and the effect it will have on my
8 Pharmacy Permit. I enter into this Stipulated Surrender of License and Order voluntarily,
9 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
10 Pharmacy.

11
12 DATED:

1/5/20

13 
14 EUGENE BABENKO, CEO; QUALITY
15 SPECIALTY PHARMACY, INC., DBA
16 QUALITY SPECIALTY PHARMACY
17 Respondent

18 I have read and fully discussed with Eugene Babenko, CEO of Respondent Quality
19 Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy the terms and conditions and other
20 matters contained in this Stipulated Surrender of License and Order. I approve its form and
21 content.

22 DATED:

1/7/2028

23 
24 HERB J. WEINBERG
25 Attorney for Respondent
26
27
28

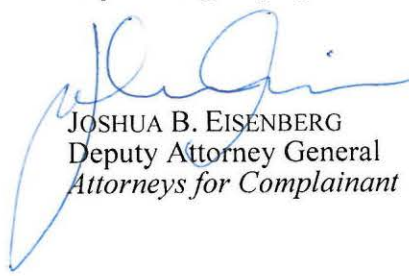
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 1/7/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


JOSHUA B. EISENBERG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6444

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 JOSHUA B. EISENBERG
Deputy Attorney General
4 State Bar No. 279323
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6115
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6444

13 **QUALITY SPECIALTY PHARMACY,**
14 **INC., DBA QUALITY SPECIALTY**
15 **PHARMACY**
16 **2233 W. Lomita Blvd.**
17 **Lomita, CA 90717**

A C C U S A T I O N

18 **Pharmacy Permit No. PHY 50710,**

19 **and**

20 **VLADISLAV TENENBAUM**
21 **2685 Euclid Heights Blvd., #1**
22 **Cleveland Heights, OH 44106**

23 **Pharmacist License No. RPH 68507**

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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

///

2. On or about August 17, 2011, the Board issued Pharmacy Permit Number PHY 50710 to Quality Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy (Respondent Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2019, unless renewed.

3. On or about December 5, 2012, the Board issued Pharmacist License Number RPH 68507 to Vladislav Tenenbaum (Respondent Tenenbaum). Respondent Tenenbaum was the Pharmacist-in-charge of Respondent Pharmacy from March 11, 2013 to December 2, 2015. The Pharmacist License expired on February 28, 2018, and has not been renewed.

JURISDICTION

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

5. Code section 4300 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.

...

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

(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.

6. Code section 4300.1 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.

STATUTORY AND REGULATORY PROVISIONS

7. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(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.

8. Section 4113 of the Code states in pertinent part, "(c) 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. ..."

9. Code section 4301 states in pertinent 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 shall include, but is not 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.

...

10. Code section 4306.5 states:

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.

11. Code section 4307(a) states:

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, or partner of any partnership, corporation, 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 manger, administrator, owner, member, officer, director, associate, or partner had knowledge 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 manger, administrator, owner, member, officer, director, associate, or partner 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.

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12. Title 16, CCR, section 1761 states:

(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.

13. California Health and Safety (H&S) Code section 11153 states in pertinent part:

(a) 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.

...

14. H&S Code section 11162.1 states in pertinent part:

(a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

///

1 (7) (A) Six quantity check off boxes shall be printed on the form so that
2 the prescriber may indicate the quantity by checking the applicable box where
3 the following quantities shall appear:

4 1-24

5 25-49

6 50-74

7 75-100

8 101-150

9 151 and over.

10 (B) In conjunction with the quantity boxes, a space shall be
11 provided to designate the units referenced in the quantity boxes when the
12 drug is not in tablet or capsule form.

13 (8) Prescription blanks shall contain a statement printed on the bottom of
14 the prescription blank that the "Prescription is void if the number of drugs
15 prescribed is not noted."

16 (9) The preprinted name, category of licensure, license number, federal
17 controlled substance registration number, and address of the prescribing
18 practitioner.

19 (10) Check boxes shall be printed on the form so that the prescriber may
20 indicate the number of refills ordered.

21 (11) The date of origin of the prescription.

22 (12) A check box indicating the prescriber's order not to substitute.

23 (13) An identifying number assigned to the approved security printer by
24 the Department of Justice.

25 (14) (A) A check box by the name of each prescriber when a prescription
26 form lists multiple prescribers.

27 (B) Each prescriber who signs the prescription form shall identify
28 himself or herself as the prescriber by checking the box by his or her name.

(b) Each batch of controlled substance prescription forms shall have the lot
number printed on the form and each form within that batch shall be numbered
sequentially beginning with the numeral one.

...

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15. H&S Code section 11164 states in pertinent part:

Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

...

16. H&S Code section 11167 states in pertinent part:

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a controlled substance may be dispensed on an oral order, an electronic data transmission order, or a written order not made on a controlled substance form as specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Department of Justice in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Department of Justice.

(e) This section shall become operative on January 1, 2005.

1 **COST RECOVERY**

2 17. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUGS**

7 18. *Oxycodone*, sold under the brand name Roxicodone, is a dangerous drug as defined
8 by Code section 4022 and is a Schedule II controlled substance pursuant to Health & Safety Code
9 section 11055(b)(1)(M). It is used to treat pain.

10 **FACTS**

11 19. The Controlled Substance Utilization Review and Evaluation System (CURES) is
12 California's Prescription Drug Monitoring Program (PDMP). Pharmacies in California are
13 required to report all filled prescriptions for Schedule II-IV controlled substances to the database
14 every week. The data is collected statewide and can be used by healthcare professionals to
15 evaluate and determine whether their patients are utilizing controlled substances correctly, or if a
16 patient has used multiple prescribers and multiple pharmacies to fill controlled substance
17 prescriptions.

18 20. On August 29, 2017, a Board inspector conducted an inspection of Respondent
19 Pharmacy following the Board's analysis of controlled substance dispensing data as reported to
20 CURES by Respondent Pharmacy. According to the CURES data, the review identified factors
21 of irregularity or red flags consistent with possible illegitimate doctor prescribing and
22 indiscriminate pharmacy dispensing, as follows:

23 a. According to the CURES data, 97% of the prescriptions written by Dr. R.C.G. and
24 dispensed by Respondents were for oxycodone 30 mg tablets.

25 b. 92% of the prescriptions were paid for utilizing cash.

26 c. Sequential prescription numbers were also noted, indicating: (1) patients may have been
27 coming to the pharmacy in small groups to drop off their controlled substance prescriptions; (2)
28 one patient may have come to the pharmacy to drop off multiple controlled substance

1 prescriptions; or (3) multiple patients may have trickled into the pharmacy over a period of time,
2 dropped off their controlled substance prescriptions and then the pharmacy typed them one after
3 another.

4 21. The CURES data analysis also revealed that Respondents dispensed several
5 prescriptions for oxycodone 30 mg tablets written by Drs. A.A. and R.M.G. Previous
6 investigations identified Drs. A.A. and R.M.G. as suspect prescribers.

7 22. At the Board inspector's request, the pharmacy staff located prescriptions written by
8 Drs. R.C.G., A.A., and, R.M.G. At the end of the inspection, the Board inspector requested that
9 Respondent Pharmacy's Pharmacist-in-charge provide the electronic pharmacy records of
10 dispensed prescriptions for all patients and all drugs for the date range from 08/01/2013 to
11 08/29/2017. The Board inspector also requested that the PIC send, by mail, all prescription
12 documents which were not located during the inspection.

13 23. On or about September 8, 2017, the Board inspector received electronic pharmacy
14 dispensing records from Respondent Pharmacy by e-mail. Analysis of these records revealed the
15 following:

16 a. Payment method for all medications (controlled and non-controlled) dispensed from
17 08/01/2013 to 08/29/2017 was approximately 9.7% cash and 90.3% insurance. This is
18 Respondent Pharmacy's baseline measure for the time period analyzed.

19 b. The percentage of payment method varied for non-controlled substances and
20 controlled substances. 7.1% of non-controlled substances were paid for with cash while 92.1%
21 were paid for by insurance. 29.1% of controlled substances were paid for with cash while 70.9%
22 were paid for by insurance. The percentage of cash payment for controlled substances was
23 approximately four times that of non-controlled substances and three times Respondent
24 Pharmacy's baseline measure, which is a factor of irregularity.

25 24. A review of Respondents' prescriber profiles for certain prescribers revealed
26 recurring irregularities in the prescribers' prescribing practices that should have caused
27 Respondents to question the legitimacy of the prescriptions issued by these prescribers.

28 ///

1 **Dr. R.C.G.**

2 25. Respondents dispensed 386 prescriptions under the prescribing authority of Dr.
3 R.C.G. from January 15, 2014 through October 19, 2016; 90.2% of the prescriptions were for
4 controlled substances.

5 26. Board Inspector I.T. noted the following factors of irregularity during the review of
6 prescriptions written by Dr. R.C.G. and dispensed by Respondents:

7 a. 90.2% of the prescriptions written by Dr. R.C.G. were for a controlled substance.
8 The percentage of controlled vs. non-controlled substance dispensing was not consistent with the
9 pattern of dispensing for Respondent Pharmacy.

10 b. Between August 1, 2013 and August 29, 2017, Respondent Pharmacy dispensed
11 1,507 out of 215,258 total prescriptions (.7%) for the largest strength of the highly abused and
12 addictive opioid, oxycodone 30 mg. 88.3% of the prescriptions written by Dr. R.C.G. and
13 dispensed by Respondents were for oxycodone 30 mg and 98% of the controlled substance
14 prescriptions written by Dr. R.C.G. were for oxycodone 30 mg. This percentage of oxycodone 30
15 mg dispensing was not consistent with the pattern of dispensing for Respondent Pharmacy.
16 Additionally, 22.6% (341 of 1,507) of the total oxycodone 30 mg prescriptions dispensed by
17 Respondents were written by Dr. R.C.G.

18 c. Of all prescriptions written by Dr. R.C.G. and dispensed by Respondents, 94.6% of
19 all prescriptions and 96.3% of controlled substance prescriptions were paid for with cash. The
20 disproportionate use of cash as payment for Dr. R.C.G.'s prescriptions was not consistent with the
21 cash payment for all medications (9.7%) and controlled substances (29.1%) at Respondent
22 Pharmacy. Additionally, Dr. R.C.G.'s patients paid cash for oxycodone 30 mg prescriptions as
23 costly as \$841.50.

24 d. Although Dr. R.C.G. reported rheumatology as his primary area of practice and
25 internal medicine as his secondary area of practice, the top medication prescribed by Dr. R.C.G.
26 and dispensed by Respondent Pharmacy was oxycodone 30 mg. Dr. R.C.G.'s area of practice
27 was not stated on his prescription documents, however, prior to dispensing oxycodone 30 mg to a
28 patient, it would be prudent for a pharmacist to determine this information.

e. Dr. R.C.G. prescribed oxycodone 30 mg for the treatment of pain to 29 out of 30 patients (96.7%) and 16 of the 30 patients (53.5%) received prescriptions exclusively for oxycodone 30 mg to treat their pain.

f. Dr. R.C.G. prescribed and Respondents dispensed the highest strength oxycodone tablets (30 mg) to 29 of 30 patients. Of Dr. R.C.G.'s 30 patients, 20 were being treated for the identical medical diagnosis of lumbar radiculopathy.

h. Respondent Pharmacy dispensed the highest strength of oxycodone (30 mg) to at least 15 of 30 new patients whose Patient Activity Reports (PARs) showed that they were potentially opioid naïve¹.

i. Multiple patients' prescriptions for oxycodone 30 mg were filled by Respondent Pharmacy on the same day and approximately the same time. Those prescriptions were written by Dr. R.C.G. on the same day, had identical lot/serial numbers and/or were either sequential or close in script number. Respondent Pharmacy assigned consecutive or nearly consecutive pharmacy prescription numbers.

Dr. A.A.

27. Board Inspector I.T. noted the following factors of irregularity during the review of prescriptions written by Dr. A.A. and dispensed by Respondents:

a. Of the prescriptions written by Dr. A.A., 59.8% of them were for a controlled substance and 58% of the total prescriptions written by Dr. A.A. were for oxycodone 30 mg.

b. 100% of the controlled substance prescriptions written by Dr. A.A. were paid for utilizing cash.

c. The highest strength of oxycodone (30 mg) was dispensed to all 59 of Dr. A.A.'s patients regardless of their age and without evidence of upward titration from a lower dose.

d. Respondent Pharmacy dispensed the highest strength of oxycodone (30 mg) to at least 22 of 59 new patients whose PARs showed they were potentially opioid naïve.

¹ The US Food and Drug Administration attributes opioid tolerance to patients who are taking, for one week or longer, at least: 60 mg oral morphine/day, 30 mg oral oxycodone/day, 8 mg oral hydromorphone/day, or an equianalgesic dose of any other opioid. Opioid naïve patients are those who do not meet the definition of opioid tolerant, and who have not taken opioid doses at least as much as those listed for one week or longer.

1 **Illegitimate Prescription Documents**

2 28. Respondent Pharmacy dispensed one prescription written by Dr. A.A. for controlled
3 substances which were written on prescription documents containing significant errors and
4 lacking security features as follows:

5 **Dr. A.A. - RX 540740**

6 a. The prescription document did not contain a watermark on the backside of the
7 prescription document consisting of the words “California Security Prescription.” Instead, the
8 watermark printed on the back of the prescription document stated, “DocuGard.”

9 b. Prescription forms for controlled substances must contain six quantity check off
10 boxes so that the prescriber may indicate the quantity by checking the applicable box where the
11 following quantities shall appear: 1-24, 25-49, 50-74, 75-100, 101-150, and 151 and over.
12 Instead, the prescription document contained six quantity check off boxes with different
13 quantities listed: 1-24, 25-49, 50-74, 75-100, 101-150, Over 151.

14 c. The prescription document did not include check boxes so that the prescriber may
15 indicate the number of refills ordered. Instead, the prescription document listed refill numbers to
16 be circled by the prescriber.

17 d. The prescription document did not include a lot number that should have been printed
18 on the form.

19 29. Respondent Pharmacy dispensed five prescriptions written by Dr. R.M.G. for
20 controlled substances which were written on prescription documents containing significant errors
21 and lacking security features as follows:

22 **Dr. R.M.G. - RXs 506903, 506906, 507067, 507356, and 507618**

23 a. The above referenced prescription documents lacked a latent, repetitive “void”
24 pattern printed across the entire front of the prescription document. If the prescription is scanned
25 or photocopied, the word “void” shall appear in a pattern across the entire front of the prescription
26 document. Instead the prescription documents had the word “Rx INVALID” printed across the
27 front when photocopied.

28 ///

b. The prescription documents did not contain a watermark on the backside of the prescription document consisting of the words “California Security Prescription.” Instead, the watermark printed on the back of the prescription document stated, “Kant Kopy.”

c. Prescription forms for controlled substances must contain six quantity check off boxes so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear: 1-24, 25-49, 50-74, 75-100, 101-150, and 151 and over. Instead, the prescription documents contained six quantity check off boxes with different quantities listed: 1-24, 25-49, 50-74, 75-100, 101-150, Over 151.

d. The prescription documents each lacked the identifying number assigned to the approved security printer by the Department of Justice.

e. The prescription documents did not include a lot number printed that should have been printed on each form.

FIRST CAUSE FOR DISCIPLINE

AS TO ALL RESPONDENTS

(Dispensed Controlled Substance Prescriptions on Noncompliant Forms)

30. Respondents are subject to disciplinary action under Code section 4301(j) and (o), in conjunction with Health and Safety Code section 11164, for unprofessional conduct for dispensing controlled substance prescriptions written on prescription forms that do not conform to Health and Safety Code section 11162.1. Respondent Tenenbaum, while employed as Pharmacist-in-charge at Respondent Pharmacy dispensed five of the six total prescriptions dispensed by Respondent Pharmacy for controlled substances which were written on prescription forms that did not conform to the requirements of Health and Safety Code section 11162.1, as set forth in paragraphs 28-29 and their subparagraphs above, and incorporated herein as though set forth in full.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **AS TO ALL RESPONDENTS**

3 **(Failure to Comply with Corresponding Responsibility)**

4 31. Respondents are subject to disciplinary action under Code section 4301(j) and (o), in
5 conjunction with Health and Safety Code section 11153(a) and Cal. Code of Regs., title 16,
6 section 1761, for unprofessional conduct in that Respondents failed to comply with their
7 corresponding responsibility to ensure that controlled substances are dispensed for a legitimate
8 medical purpose when Respondents dispensed 482 prescriptions under the prescribing authority
9 of Drs. R.C.G. and A.A. when there were objective factors of irregularity that suggested the
10 medical illegitimacy of the prescriptions, as set forth in paragraphs 24-28 and their subparagraphs
11 above, and incorporated herein as though set forth in full.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **AS TO ALL RESPONDENTS**

14 **(Unprofessional Conduct – Gross Negligence)**

15 32. Respondents are subject to disciplinary action under Code section 4301(c) and (o), in
16 conjunction with Health and Safety Code section 11153(a) and Cal. Code of Regs., title 16,
17 section 1761, for gross negligence in that Respondents failed to comply with their corresponding
18 responsibility to ensure that controlled substances are dispensed for a legitimate medical purpose
19 when Respondent filled 482 prescriptions under the prescribing authority of Drs. R.C.G. and A.A.
20 when there were objective factors of irregularity that suggested the medical illegitimacy of the
21 prescriptions, as set forth in paragraphs 24-28 and their subparagraphs above, and incorporated
22 herein as though set forth in full.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **AS TO ALL RESPONDENTS**

25 **(Clearly Excessive Furnishing of Controlled Substances)**

26 33. Respondents are subject to disciplinary action for engaging in unprofessional conduct
27 pursuant to Code section 4301(c) for the clearly excessive furnishing of controlled substances, as
28

1 set forth in paragraphs 24-28 and their subparagraphs above, and incorporated herein as though
2 set forth in full.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **AS TO RESPONDENT TENENBAUM ONLY**

5 **(Unprofessional Conduct – Failure to Exercise, or Inappropriate Exercise, of Professional**
6 **Education, Training, or Experience)**

7 34. Respondent Tenenbaum is subject to disciplinary action under Code section 4306.5,
8 for unprofessional conduct for the inappropriate exercise of his education, training, or experience
9 as a pharmacist when Respondent failed to take steps to determine the legitimacy of prescriptions
10 dispensed between August 1, 2013 and December 2, 2015, in light of objective factors of
11 irregularity, as set forth in paragraphs 24-28 and their subparagraphs above, and incorporated
12 herein as though set forth in full.

13 **MATTERS IN AGGRAVATION**

14 35. To determine the degree of discipline, if any, to be imposed against Respondent
15 Pharmacy, Complainant alleges that on or about May 17, 2018, in a prior action, the Board of
16 Pharmacy issued Citation No. CI 2016 73115 and ordered Respondent Pharmacy to pay a fine in
17 the amount of \$1,750. The cause for the citation was based on Respondent Pharmacy's failure to
18 comply with Health and Safety Code section 111440 (unlawful for any person to manufacture,
19 sell, deliver, hold, or offer for sale any drug or devise that is misbranded) and Business and
20 Professions Code section 4081(a) (failure to completely account for all dangerous drugs on hand).
21 Respondent Pharmacy was ordered to pay a fine in the amount of \$1,750.00.

22 **OTHER MATTERS**

23 36. Pursuant to Code section 4307, if Pharmacy Permit Number PHY 50710 issued to
24 Quality Specialty Pharmacy Inc., dba, Quality Specialty Pharmacy is suspended, revoked, or
25 placed on probation, and Respondent Tenenbaum, while acting as the manager, administrator,
26 owner, member, officer, director, associate, or partner, had knowledge of or knowingly
27 participated in any conduct for which Pharmacy Permit Number PHY 50710 was revoked,
28 suspended, or placed on probation, Respondent Tenenbaum shall be prohibited from serving as a

1 manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the
2 Board.

3 37. Pursuant to Code section 4307, if Pharmacist License Number RPH 68507 issued to
4 Respondent Vladislav Tenenbaum is suspended or revoked, Respondent Tenenbaum shall be
5 prohibited from serving as a manager, administrator owner, member, officer, director, associate,
6 or partner of a licensee.

7 **PRAYER**

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

10 1. Revoking or suspending Pharmacy Permit Number PHY 50710 issued to Quality
11 Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy;

12 2. Revoking or suspending Pharmacist License Number RPH 68507 issued to Vladislav
13 Tenenbaum;

14 3. Prohibiting Vladislav Tenenbaum from serving as a manger, administrator, owner,
15 member, officer, director, associate, or partner of a licensee of the Board.

16 4. Ordering Quality Specialty Pharmacy, Inc., dba Quality Specialty Pharmacy and
17 Vladislav Tenenbaum, jointly and severally, to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3; and,

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

21
22 DATED: August 12, 2019



23 ANNE SODERGREN
24 Interim Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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