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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. 6464

13 **R. BURNS PHARMACY, INC. DBA**
14 **ROBERT BURNS BEVERLY HILLS**
15 **MEDICAL TOWER PHARMACY,**
16 **BRUCE ISENBERG, DONNA ISENBERG**
17 **1125 S. Beverly Dr.**
18 **Los Angeles, CA 90035**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Permit No. PHY 39451,**

17
18 Respondent.

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22 **FINDINGS OF FACT**

23 1. On or about December 24, 2020, Complainant Anne Sodergren, in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
25 filed Accusation No. 6464 against R. Burns Pharmacy, Inc. dba Robert Burns Beverly Hills
26 Medical Tower Pharmacy, Bruce Isenberg, Donna Isenberg (Respondent) before the Board of
27 Pharmacy. (Accusation attached as Exhibit A.)
28

1 2. On or about October 4, 1993, the Board of Pharmacy (Board) issued Pharmacy
2 Permit No. PHY 39451 to Respondent. The Pharmacy Permit was in full force and effect at all
3 times relevant to the charges brought in Accusation No. 6464 and expired on June 3, 2019. The
4 permit has not been renewed, and was instead cancelled. This expiration and cancellation in
5 licensure, however, pursuant to Business and Professions Code sections 118(b) and 4300.1 does
6 not deprive the Board of its authority to institute or continue this disciplinary proceeding.

7 3. On or about January 8, 2021, Respondent was served by Certified and First Class
8 Mail copies of the Accusation No. 6464, Statement to Respondent, Notice of Defense, Request
9 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
10 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
11 section 4100, is required to be reported and maintained with the Board. Respondent's address of
12 record was and is: 1125 S. Beverly Dr., Los Angeles, CA 90035.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505(c) and/or Business and Professions Code section 124.

15 5. Government Code section 11506(c) states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense . . . and the notice shall be deemed a specific denial of all
18 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
19 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
20 discretion may nevertheless grant a hearing.

21 6. The Board takes official notice of its records and the fact that Respondent failed to
22 file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore
23 waived their right to a hearing on the merits of Accusation No. 6464.

24 7. California Government Code section 11520(a) states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense . . . or to appear at
26 the hearing, the agency may take action based upon the respondent's express
27 admissions or upon other evidence and affidavits may be used as evidence without
28 any notice to respondent

 8. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,

1 as well as taking official notice of all the investigatory reports, exhibits and statements contained
2 therein on file at the Board's offices regarding the allegations contained in Accusation No. 6464,
3 finds that the charges and allegations in Accusation No. 6464, are separately and severally, found
4 to be true and correct by clear and convincing evidence.

5 9. The Board finds that the actual costs for Investigation and Enforcement are
6 \$28,451.50 as of March 18, 2021.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent R. Burns Pharmacy, Inc. dba
9 Robert Burns Beverly Hills Medical Tower Pharmacy, Bruce Isenberg, Donna Isenberg has
10 subjected its Pharmacy Permit No. PHY 39451 to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Permit based
13 upon the following violations alleged in the Accusation which are supported by the evidence
14 contained in the Default Decision Investigatory Evidence Packet in this case:

15 a. Business and Professions Code section 4301, subdivision (o), in that Respondent
16 violated California Code of Regulations, title 16, section 1715, subsection (a) by not completing a
17 self-assessment of pharmacy's compliant with federal and state laws;

18 b. Business and Professions Code section 4301, subdivision (o), in that Respondent
19 violated California Code of Regulations, title 16, section 1735.2, subsection (k) by not completing a
20 self-assessment for compounding pharmacies;

21 c. Business and Professions Code section 4301, subdivision (o), in that Respondent
22 violated California Code of Regulations, title 16, section 1711, by not maintaining a quality
23 assurance policy for the pharmacy;

24 d. Business and Professions Code section 4301, subdivision (o), in that Respondent
25 violated Business and Professions Code section 4306.5 by failing to exercise best professional
26 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled
27 substances, dangerous drugs, or dangerous devices;

28 ///

1 e. Business and Professions Code sections 4301, subdivisions (f) and (g), and 4059,
2 subdivision (a), in that Respondent dispensed prescriptions without an authorization from a
3 prescribing physician;

4 f. Business and Professions Code section 4301, subdivision (o), in that Respondent
5 violated Business and Professions Code section 4105, subdivision (d)(1), by failing to retain
6 records of dangerous drugs prescriptions filled and patient medication histories;

7 g. Business and Professions Code section 4301, subdivision (o), in that Respondent
8 violated Health and Safety Code section 11165, subdivision (d), by failing to comply with
9 CURES requirements;

10 h. Business and Professions Code section 4301, subdivision (o), in that Respondent
11 violated Health and Safety Code section 11164, by failing to comply with prescription
12 requirements for controlled substances;

13 i. Business and Professions Code section 4301, subdivision (o), in that Respondent
14 violated Health and Safety Code section 11153, by failing to meet its corresponding responsibility
15 by dispensing hundreds of controlled substance prescriptions despite the presence of significant
16 factors of irregularity; and

17 j. Business and Professions Code sections 4306.5, subdivision (b), and 4301,
18 subdivision (o), in that Respondent violated Business and Professions Code section 4059,
19 subdivision (a) by furnishing dangerous drugs to cat owners without obtaining a legitimate
20 prescription.

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ORDER

IT IS SO ORDERED that Pharmacy Permit No. PHY 39451, issued to Respondent R. Burns Pharmacy, Inc. dba Robert Burns Beverly Hills Medical Tower Pharmacy, Bruce Isenberg, Donna Isenberg, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on May 26, 2021.

It is so ORDERED on April 26, 2021.



Greg Lippe
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

64065594.DOCX
DOJ Matter ID:LA2018601666

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
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2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 6464

12 **R. BURNS PHARMACY, INC. DBA**
13 **ROBERT BURNS BEVERLY HILLS**
14 **MEDICAL TOWER PHARMACY;**
1125 S. Beverly Dr.
Los Angeles, CA 90035

ACCUSATION

15 **Permit No. PHY 39451,**

16
17 Respondent.

18
19 **PARTIES**

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

22 2. On or about October 4, 1993, the Board of Pharmacy issued Permit Number PHY
23 39451 (Permit) to R. Burns Pharmacy, Inc. dba Robert Burns Beverly Hills Medical Tower
24 Pharmacy (Respondent), with Bruce Isenberg as President,¹ and Donna Isenberg as Secretary.
25 The Permit was in full force and effect at all times relevant to the charges brought herein and
26 expired on June 3, 2019. The permit has not been renewed, and was instead cancelled.

27
28 ¹ Bruce Isenberg was also a licensed pharmacist (Licensed Pharmacist License No. 22820)
and Respondent's Pharmacist-In-Charge (PIC). Mr. Isenberg is now deceased.

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4. Code section 4011 provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code §§ 4000, *et seq.*] and the Uniform Controlled Substances Act [Health & Safety Code §§ 11000, *et seq.*].

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

(1) Suspending judgment.

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

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

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.

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1 7. Code section 4021 provides, in pertinent part, that a “controlled substance” means
2 any substance listed in Schedules I through V contained in Health and Safety Code section 11053
3 *et seq.*

4 8. Code section 4022 provides:

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

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

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

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

15 9. Code section 4059 provides, in pertinent part:

16 (a) A person may not furnish any dangerous drug, except upon the prescription
17 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
19 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
20 naturopathic doctor pursuant to Section 3640.7.

21 ...

22 10. Code section 4067, provides, in pertinent part:

23 (a) No person or entity shall dispense or furnish, or cause to be dispensed or
24 furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the
25 Internet for delivery to any person in this state without a prescription issued pursuant
26 to a good faith prior examination of a human or animal for whom the prescription is
27 meant if the person or entity either knew or reasonably should have known that the
28 prescription was not issued pursuant to a good faith prior examination of a human or
animal, or if the person or entity did not act in accordance with Section 1761 of Title
16 of the California Code of Regulations.

...

11. Code section 4105 provides, in pertinent part:

...

(d)(1) Any records that are maintained electronically shall be maintained so that
the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on
duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the
designated representative on duty, shall, at all times during which the licensed
premises are open for business, be able to produce a hard copy and electronic copy of
all records of acquisition or disposition or other drug or dispensing-related records

maintained electronically.

(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

...

12. Code section 4156 provides, in pertinent part, that "[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."

13. Code section 4301 provides, 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 includes, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts

...

(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.

...

14. Code section 4306.5 provides:

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

1 regard to the dispensing or furnishing of controlled substances, dangerous drugs, or
2 dangerous devices, or with regard to the provision of services.

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

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

9 15. Health & Safety Code section 11153 provides, in pertinent part:

10 (a) A prescription for a controlled substance shall only be issued for a
11 legitimate medical purpose by an individual practitioner acting in the usual course of
12 his or her professional practice. The responsibility for the proper prescribing and
13 dispensing of controlled substances is upon the prescribing practitioner, but a
14 corresponding responsibility rests with the pharmacist who fills the prescription.
15 Except as authorized by this division, the following are not legal prescriptions: (1) an
16 order purporting to be a prescription which is issued not in the usual course of
17 professional treatment or in legitimate and authorized research; or (2) an order for an
18 addict or habitual user of controlled substances, which is issued not in the course of
19 professional treatment or as part of an authorized narcotic treatment program, for the
20 purpose of providing the user with controlled substances, sufficient to keep him or her
21 comfortable by maintaining customary use.

22 ...

23 16. Health and Safety Code section 11162.1 provides, in pertinent part:

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

26 (1) A latent, repetitive "void" pattern shall be printed across the entire front of the
27 prescription blank; if a prescription is scanned or photocopied, the word "void" shall
28 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.

(7)(A) Six quantity check off boxes shall be printed on the form 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
151 and over.

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

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

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

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

(11) The date of origin of the prescription.

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

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

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

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

...

17. Health and Safety Code section 11164 provides:

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.

(b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e)(1) Notwithstanding any other law, a prescription written on a prescription form that was otherwise valid prior to January 1, 2019, but that does not comply with paragraph (15) of subdivision (a) of Section 11162.1, or a valid controlled substance prescription form approved by the Department of Justice as of January 1, 2019, is a valid prescription that may be filled, compounded, or dispensed until January 1, 2021.

(2) If the Department of Justice determines that there is an inadequate availability of compliant prescription forms to meet demand on or before the date described in paragraph (1), the department may extend the period during which prescriptions written on noncompliant prescription forms remain valid for a period no longer than an additional six months.

18. Health & Safety Code section 11165, subsection (a), addresses enactment of the Controlled Substance Utilization Review and Evaluation System (CURES), a database maintained by the Department of Justice for the electronic monitoring of, and Internet access to, information regarding the prescribing and dispensing of Schedule II-IV controlled substances. CURES is California's Prescription Drug Monitoring Program ("PDMP"). Health & Safety Code section 11165, subsection (d), mandates any dispenser of a Schedule II-IV controlled substance, including pharmacies, to report the disposition of any Schedule II-IV controlled substance as soon as possible, but not more than seven days after the date a controlled substance is dispensed.

REGULATORY PROVISIONS

19. California Code of Regulations (“CCR”), title 16, section 1711, provides, in pertinent part:

(a) Each pharmacy shall establish or participate in an established quality assurance program which documents and assesses medication errors to determine cause and an appropriate response as part of a mission to improve the quality of pharmacy service and prevent errors

...

(c)(1) Each quality assurance program shall be managed in accordance with written policies and procedures maintained in the pharmacy in an immediately retrievable form

...

20. CCR, title 16, section 1707.1 provides:

(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

2. The prescriber's name and where appropriate, license number, DEA registration number or other unique identifier;

3. The date on which a drug was dispensed or refilled;

4. The prescription number for each prescription; and

5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy: patient allergies, idiosyncracies, current medications and relevant prior medications including nonprescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

1 (2) The patient medication record shall be maintained for at least one year from
2 the date when the last prescription was filled.

3 21. CCR, title 16, section 1715 provides:

4 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or
5 section 4037 of the Business and Professions Code shall complete a self-assessment
6 of the pharmacy's compliance with federal and state pharmacy law. The assessment
7 shall be performed before July 1 of every odd-numbered year. The primary purpose
8 of the self-assessment is to promote compliance through self-examination and
9 education.

10 (b) In addition to the self-assessment required in subdivision (a) of this section,
11 the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

12 (1) A new pharmacy permit has been issued, or

13 (2) There is a change in the pharmacist-in-charge, and he or she becomes the
14 new pharmacist-in-charge of a pharmacy.

15 (3) There is a change in the licensed location of a pharmacy to a new address.

16 (c) The components of this assessment shall be on Form 17M-13 (Rev. 10/14)
17 entitled "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-
18 Assessment" and on Form 17M-14 (Rev. 10/14) entitled "Hospital Pharmacy Self-
19 Assessment" which are hereby incorporated by reference to evaluate compliance with
20 federal and state laws and regulations.

21 (d) Each self-assessment shall be kept on file in the pharmacy for three years
22 after it is performed.

23 22. CCR, title 16, section 1735.2 provides, in pertinent part:

24 ...

25 (k) Prior to allowing any drug product preparation to be compounded in a
26 pharmacy, the pharmacist-in-charge shall complete a self-assessment for
27 compounding pharmacies developed by the board (Incorporated by reference is
28 "Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-
Assessment" Form 17M-39 Rev. 02/12.) as required by Section 1715 of Title 16,
Division 17, of the California Code of Regulations. That form contains a first section
applicable to all compounding, and a second section applicable to sterile injectable
compounding. The first section must be completed by the pharmacist-in-charge
before any compounding is performed in the pharmacy. The second section must be
completed by the pharmacist-in-charge before any sterile compounding is performed
in the pharmacy. The applicable sections of the self-assessment shall subsequently be
completed before July 1 of each odd-numbered year, within 30 days of the start date
of a new pharmacist-in-charge or change of location, and within 30 days of the
issuance of a new pharmacy license. The primary purpose of the self-assessment is to
promote compliance through self-examination and education.

29 ...

30 23. CCR, title 16, section 1761 provides:

31 (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.

COST RECOVERY

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

DEFINITIONS

25. *Oxycodone* is designated a Schedule II controlled substance by Health and Safety Code section 11055(b)(1)(M), and is designated a Schedule II controlled substance by the Code of Federal Regulations, title 21, section 1308.12(b)(1)(xiv). *Oxycodone* is a dangerous drug pursuant to Business and Professions Code section 4022.

26. *Alprazolam* is designated a Schedule IV controlled substance by Health and Safety Code section 11057(d)(1), and is designated a Schedule IV controlled substance by the Code of Federal Regulations, title 21, section 1308.14(c)(2). *Alprazolam* is a dangerous drug pursuant to Business and Professions Code section 4022.

27. *Cyclobenzaprine* is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

A. October 24, 2017 Inspection

28. On or about October 24, 2017, Inspector V.S. went to the pharmacy operated by Respondent (Pharmacy), located at 1125 South Beverly Drive, in the city of Los Angeles, to conduct an inspection. At that time, V.S. met with Bruce Isenberg (now deceased), who was Respondent's President and Pharmacist-in-Charge (PIC).

29. During this inspection, Mr. Isenberg admitted that he did not complete community and compounding self-assessment forms, which evaluate Respondent's compliance with federal

1 and state laws.

2 30. Also during this inspection, Mr. Isenberg admitted that he did not have a quality
3 assurance policy for the Pharmacy.

4 31. Also during this inspection, Inspector V.S. reviewed Pharmacy records and pulled
5 nine prescriptions that had recently been filled by Respondent. Further investigation confirmed
6 that the prescriptions bearing the following prescription numbers had been dispensed by
7 Respondent without a prescriber's authorization: 793712, 793669, 793676, 793706, 793666 and
8 793673.

9 **B. April 11, 2018 Inspection**

10 32. On or about April 11, 2018, Board Inspector N.R. conducted a further inspection of
11 the Pharmacy. Mr. Isenberg was again present, and assisted with the inspection.

12 33. This inspection and subsequent investigation revealed that Respondent lost the
13 electronic records of prescriptions filled from October 12, 2016 to May 16, 2017, and any
14 prescriptions filled during this period were missing from the Pharmacy's electronic patient
15 medication histories.

16 34. This inspection and subsequent investigation also revealed that for the period of April
17 13, 2015 to April 11, 2018, but excluding the period from October 12, 2016 to May 16, 2017, the
18 Pharmacy's CURES report was missing approximately 799 prescriptions for Schedule II-IV
19 controlled substances that appeared in the Pharmacy's dispensing history. Additionally, on
20 September 15, 2016, Respondent reported 628 prescriptions to the CURES database that were
21 filled more than seven days earlier from the date of reporting.

22 35. The inspection and subsequent investigation also revealed that Respondent dispensed
23 141 prescriptions for controlled substances that were written on 102 forms that lacked a lot
24 number and a California Security Prescription watermark.

25 36. The inspection and subsequent investigation also revealed that between March 30,
26 2018 and April 10, 2018, Respondent furnished at least 53 orders of dangerous drugs to owners of
27 cats without obtaining a legitimate prescription. Twenty-two of the sales had no veterinarian's
28 name associated with the invoice, and were not entered into the Pharmacy's dispensing software.

1 The veterinarians allegedly associated with the remainder of the prescriptions denied writing a
2 prescription for 31 of the orders.

3 37. The inspection and subsequent investigation also revealed that from April 13, 2015 to
4 April 11, 2018, Respondent dispensed at least 555 prescriptions under the prescribing authority of
5 doctors J.B., A.A. and R.Q. despite the presence of significant factors of irregularity. Objective
6 factors indicating the prescriptions in question were not written for legitimate purposes included:

- 7 a. All of Dr. J.B.'s prescriptions, 76% of Dr. A.A.'s prescriptions, and 97% of Dr.
8 R.Q.'s prescriptions were written for controlled substances;
- 9 b. All but one of Dr. J.B.'s prescriptions was for either oxycodone 30 mg or
10 alprazolam 2 mg;
- 11 c. Approximately 77% of Dr. A.A.'s prescriptions were written for oxycodone 30
12 mg;
- 13 d. All but one of Dr. R.Q.'s prescriptions were written for oxycodone 30 mg;
- 14 e. Dr. J.B.'s prescriptions included 230 prescriptions for oxycodone 30 mg, 1
15 prescription for oxycodone 20 mg, and no prescriptions for any lower strength.
16 Dr. J.B.'s prescriptions also included 162 prescriptions for alprazolam 2 mg and no
17 prescriptions for any lower strength;
- 18 f. Dr. A.A.'s prescribing history included 99 prescriptions for oxycodone 30 mg and
19 no prescriptions for any lower strength;
- 20 g. Dr. R.Q.'s prescribing profile contained 32 prescriptions for oxycodone 30 mg and
21 no prescriptions for any lower strength;
- 22 h. All 11 patients who received prescriptions from Dr. J.B. during the period from
23 April 13, 2015 to April 11, 2018 received multiple prescriptions for both
24 oxycodone 30 mg and alprazolam 2 mg tablets. Most of these prescriptions had
25 the same quantity and directions.
- 26 i. All seven patients who received prescriptions from Dr. A.A. during the period
27 from April 13, 2015 to April 11, 2018 received at least one prescription for
28 oxycodone 30 mg, 120 tablets.

- j. All but one of Dr. R.Q.'s prescriptions were written for oxycodone 30 mg, with a quantity of 120 tablets.
- k. Respondent did not accept prescription insurance, and all of the prescriptions from the prescribers in question were purchased with cash.
- l. Dr. J.B.'s self-reported areas of practice were geriatric medicine and family medicine with a board certification in obstetrics and gynecology. However, his prescribing profile did not include medications typically prescribed by geriatric or family medicine practitioners or gynecologists, such as medications for high blood pressure, high cholesterol, diabetes, allergies, infections, insomnia or oral contraceptives.
- m. Dr. A.A.'s self-reported area of practice was pain medicine, yet frequently prescribed only high dose narcotics and cyclobenzaprine. Dr. A.A.'s prescribing history included one prescription for an oral anti-inflammatory, and no prescriptions for topical anti-inflammatories or topical numbing agents, medications for nerve pain, or narcotic pain relievers other than oxycodone 30 mg tablets.
- n. Dr. R.Q.'s self-reported areas of practice were family medicine and complementary and alternative medicine, yet he almost exclusively prescribed oxycodone 30 mg, a commonly abused narcotic pain reliever.
- o. Patients of Dr. A.A. and Dr. R.Q. would have travelled 27 miles, one way, between the prescriber's office and the Pharmacy.
- p. All 102 prescription documents from doctors J.B., A.A. and R.Q. lacked a lot number and a California Security Prescription watermark.
- q. Mr. Isenberg failed to provide evidence to indicate he conferred with the prescribers in question to resolve these irregularities before filling the prescriptions.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Self-Assessment Requirements)

38. Respondent is subject to disciplinary action under Code Section 4301, subdivision (o), in that Respondent violated CCR, title 16, section 1715, subsection (a). As set forth in paragraphs 29-30, incorporated herein, on October 24, 2017, PIC Isenberg admitted that he had not completed a self-assessment of the Pharmacy's compliance with federal and state laws. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Compounding Self-Assessment Requirements)

39. Respondent is subject to disciplinary action under Code Section 4301, subdivision (o), in that Respondent violated CCR, title 16, section 1735.2, subsection (k). As set forth in paragraphs 29-30, incorporated herein, on October 24, 2017, PIC Isenberg admitted that he had not completed a self-assessment for compounding pharmacies for the Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Quality Assurance Policy)

40. Respondent is subject to disciplinary action under Code Section 4301, subdivision (o), in that Respondent violated CCR, title 16, section 1711. As set forth in paragraphs 29 and 31, incorporated herein, on October 24, 2017, PIC Isenberg admitted that he did not maintain a quality assurance policy for the Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Exercise Best Professional Judgment)

41. Respondent is subject to disciplinary action under Code Section 4301, subdivision (o), in that Respondent violated Code section 4306.5. As set forth in paragraphs 29 through 32, incorporated herein, PIC Isenberg admitted that he had not completed either a self-assessment of the Pharmacy's compliance with federal and state laws, or a self-assessment for compounding

1 pharmacies for the Pharmacy. He also admitted he did not maintain a quality assurance policy for
2 the Pharmacy. Finally, Respondent dispensed prescriptions 793712, 793669, 793676, 793706,
3 793666, and 793673 without an authorization from a prescribing physician. Complainant refers
4 to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37,
5 inclusive, as though set forth fully.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Furnishing Without Prescription)**

8 42. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
9 and (g), and Code section 4059, subdivision (a). As set forth in paragraphs 29 and 32,
10 incorporated herein, Respondent dispensed prescriptions 793712, 793669, 793676, 793706,
11 793666, and 793673 without an authorization from a prescribing physician. Complainant refers
12 to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37,
13 inclusive, as though set forth fully.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Failure to Retain Records of Dangerous Drugs and Patient Medication History)**

16 43. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
17 in that Respondent violated Code section 4105, subdivision (d)(1). As set forth in paragraphs 33
18 and 34, incorporated herein, Respondent lost the electronic records of prescriptions filled from
19 October 12, 2016 to May 16, 2017, and any prescriptions filled during this period were missing
20 from the Pharmacy's electronic patient medication histories. Complainant refers to, and by this
21 reference incorporates, the allegations set forth above in paragraphs 28 through 37, inclusive, as
22 though set forth fully.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with CURES Requirements)**

25 44. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
26 in that Respondent violated Health and Safety Code section 11165, subdivision (d). As set forth
27 in paragraphs 33 and 35, incorporated herein, for the period of April 13, 2015 to April 11, 2018,
28 but excluding the period from October 12, 2016 to May 16, 2017, the Pharmacy's CURES report

1 was missing approximately 799 prescriptions for Schedule II-IV controlled substances that
2 appeared in the Pharmacy's dispensing history. Additionally, on September 15, 2016,
3 Respondent reported 628 prescriptions to the CURES database that were filled more than seven
4 days earlier from the date of reporting. Complainant refers to, and by this reference incorporates,
5 the allegations set forth above in paragraphs 28 through 37, inclusive, as though set forth fully.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Requirements for Controlled Substance Prescriptions)**

8 45. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
9 in that Respondent violated Health and Safety Code section 11164. As set forth in paragraphs 33
10 and 36, incorporated herein, Respondent dispensed 141 prescriptions for controlled substances
11 that were written on 102 forms that lacked a lot number and a California Security Prescription
12 watermark. Complainant refers to, and by this reference incorporates, the allegations set forth
13 above in paragraphs 28 through 37, inclusive, as though set forth fully.

14 **NINTH CAUSE FOR DISCIPLINE**

15 **(Corresponding Responsibility)**

16 46. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
17 in that Respondent violated Health and Safety Code section 11153. As set forth in paragraphs 33
18 and 38, including all subparagraphs, incorporated herein, from April 13, 2015 to April 11, 2018,
19 Respondent dispensed at least 555 prescriptions under the prescribing authority of doctors J.B.,
20 A.A. and R.Q. despite the presence of significant factors of irregularity. Complainant refers to,
21 and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37,
22 inclusive, as though set forth fully.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Furnishing Dangerous Drugs without a Prescription)**

25 47. Respondent is subject to disciplinary action under Code sections 4306.5, subdivision
26 (b), and 4301, subdivision (o), in that Respondent violated Code section 4059, subdivision (a).
27 As set forth in paragraphs 33 and 37, incorporated herein, between March 30, 2018 and April 10,
28 2018, Respondent furnished at least 53 orders of dangerous drugs to owners of cats without

obtaining a legitimate prescription. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28 through 37, inclusive, as though set forth fully.

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 Permit Number PHY 39451, issued to R. Burns Pharmacy, Inc. dba Robert Burns Beverly Hills Medical Tower Pharmacy;

2. Ordering R. Burns Pharmacy, Inc. dba Robert Burns Beverly Hills Medical Tower Pharmacy 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,

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/24/2020

Signature on File

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

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