

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

In the Matter of the Accusation Against:

**COLORADO PHARMACY, INC. dba
COLORADO PHARMACY;
VADIM BELITSKY,
CEO/PRESIDENT/TREASURER/CFO;
MANI MANOUCHEHRIAN, SECRETARY
Original Permit No. PHY 52413; and**

**MICHAEL PAUL LOWE,
Pharmacist License No. RPH 37609,**

Respondents

Agency Case No. 6562

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 December 9, 2020.

It is so ORDERED on November 9, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over a horizontal line.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
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**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 6562

13 **COLORADO PHARMACY, INC. DBA**
14 **COLORADO PHARMACY;**
15 **VADIM BELITSKY,**
16 **CEO/PRESIDENT/TREASURER/CFO;**
17 **MANI MANOUCHEHRIAN, SECRETARY**
18 **2455 Colorado Blvd, Space 6**
19 **Los Angeles, CA 90041**

20 **Original Permit No. PHY 52413,**

21 **MICHAEL PAUL LOWE,**
22 **Pharmacist-In-Charge**
23 **5414 Newcastle Ave, #42**
24 **Encino, CA 91316**

25 **Pharmacist License No. RPH 37609,**

26 Respondents.
27
28

**STIPULATED SURRENDER OF
LICENSE AND ORDER:**

COLORADO PHARMACY, INC. DBA
COLORADO PHARMACY; VADIM
BELITSKY, CEO/PRESIDENT/
TREASURER/CFO ONLY

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

PREAMBLE

1. Respondent Colorado Pharmacy, Inc. dba Colorado Pharmacy; Vadim Belitsky, Chief Executive Officer/President/Treasurer/Chief Financial Officer (Respondent) operated under Pharmacy Permit Number PHY 52413. On December 31, 2018, Respondent discontinued business. It is Respondent's desire to stipulate to the surrender of Original Permit Number PHY 52415. The terms of this Stipulated Surrender relate only to Respondent Colorado Pharmacy, Inc. dba Colorado Pharmacy; Vadim Belitsky, Chief Executive Officer/ President/Treasurer/Chief Financial Officer.

PARTIES

2. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Morgan Malek, Deputy Attorney General.

3. Respondent is represented in this proceeding by attorney Rob Cucher, 315 S. Beverly Drive, Ste. 310, Beverly Hills, CA 90212.

4. On or about May 1, 2015, the Board of Pharmacy issued Original Permit Number PHY 52413 to Respondent with Vadim Belitsky (Belitsky) as Chief Executive Officer/President/Treasurer/Chief Financial Officer and M.M. as Secretary. On or about May 5, 2016, M.M. disassociated from Respondent by transferring all ownership shares to Belitsky. Respondent's Original Permit was in full force and effect at all times relevant to the charges brought herein. The Original Permit was canceled on January 14, 2019, due to discontinuance of business effective December 31, 2018.

JURISDICTION

5. Accusation No. 6562 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 25, 2019. Respondent timely filed its Notice of Defense contesting

1 the Accusation. The Accusation was amended and The Second Amended Accusation was served
2 on Respondent on or about August 16, 2020 and it is the operative pleading in this matter. A
3 copy of the Second Amended Accusation No. 6562 (Accusation) is attached as Exhibit A and is
4 incorporated by reference.

5 **ADVISEMENT AND WAIVERS**

6 6. Respondent has carefully read, fully discussed with counsel, and understands the
7 charges and allegations in Second Amended Accusation No. 6562. Respondent also has carefully
8 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of
9 License and Order.

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

16 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
17 every right set forth above.

18 **CULPABILITY**

19 9. Respondent understands and agrees that the charges and allegations in Second
20 Amended Accusation No. 6562, if proven at a hearing, constitute cause for imposing discipline
21 upon its Permit.

22 10. For the purpose of resolving the Second Amended Accusation without the expense
23 and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
24 establish a factual basis for the charges in the Second Amended Accusation, and that Respondent
25 hereby gives up its right to contest those charges and surrenders Original Permit Number PHY
26 52413 for the Board's formal acceptance.

27 11. Respondent understands that by signing this stipulation it enables the Board to issue
28 an order accepting the surrender of Original Permit Number PHY 52413 without further process.

CONTINGENCY

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

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

14. This Stipulated Surrender of License and Order 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 Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

ORDER

IT IS HEREBY ORDERED that Original Permit Number PHY 52413, issued to Respondent Colorado Pharmacy, Inc. dba Colorado Pharmacy; Vadim Belitsky, Chief Executive Officer/President/Treasurer/Chief Financial Officer is surrendered and accepted by the Board.

1. The surrender of Respondent's Original Permit and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This

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1 stipulation constitutes a record of the discipline and shall become a part of Respondent's license
2 history with the Board.

3 2. Respondent shall lose all rights and privileges to operate as a pharmacy in California
4 as of the effective date of the Board's Decision and Order.

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

7 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
8 California, the Board shall treat it as a new application for licensure. Respondent must comply
9 with all the laws, regulations and procedures for licensure in effect at the time the application or
10 petition is filed, and all of the charges and allegations contained in Second Amended Accusation
11 No. 6562 shall be deemed to be true, correct and admitted by Respondent when the Board
12 determines whether to grant or deny the application or petition.

13 5. Respondent shall pay the agency its costs of investigation and enforcement in the
14 amount of \$25,000.00 prior to issuance of a new or reinstated license.

15 6. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in Second Amended Accusation No. 6562
18 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
19 of Issues or any other proceeding seeking to deny or restrict licensure.

20 7. Vadim Belitsky is restricted from serving as a manager, administrator, owner,
21 member, officer, director, associate, or partner of a licensee for a period of five years from the
22 effective date of this Order.

23 8. Respondent may not apply for any license, permit, or registration from the Board for
24 a period of three (3) years from the effective date of the Decision and Order. If Respondent ever
25 applies for licensure or petitions for reinstatement in the State of California, the Board shall treat
26 it as a new application for licensure. Respondent must comply with all the laws, regulations and
27 procedures for licensure in effect at the time the application or petition is filed, and all of the
28 charges and allegations contained in Second Amended Accusation No. 6562 shall be deemed to

1 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
2 the application or petition.

3 **ACCEPTANCE**

4 I have carefully read the above Stipulated Surrender of License and Order and have fully
5 discussed it with my attorney. I understand the stipulation and the effect it will have on Original
6 Permit Number PHY 52413 and on my ability to serve as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee. I enter into this Stipulated Surrender
8 of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
9 Decision and Order of the Board of Pharmacy. I attest I am the Chief Executive Officer/
10 President/Treasurer/Chief Financial Officer of Colorado Pharmacy, Inc. dba Colorado Pharmacy
11 and I am fully authorized to bind Respondent to the terms of this agreement.

12
13 DATED: _____

14 VADIM BELITSKY,
15 CEO/PRESIDENT/TREASURER/CFO,
16 COLORADO PHARMACY dba
COLORADO PHARMACY, INC.,
Respondent

17
18
19 I have read and fully discussed with Respondent the terms and conditions and other matters
20 contained in this Stipulated Surrender of License and Order. I approve its form and content.

21
22 DATED: _____

23 Rob Cucher,
24 Law Office of Rob D. Cucher,
Attorney for Respondent

1 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
2 the application or petition.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Surrender of License and Order and have fully
5 discussed it with my attorney. I understand the stipulation and the effect it will have on Original
6 Permit Number PHY 52413 and on my ability to serve as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee. I enter into this Stipulated Surrender
8 of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
9 Decision and Order of the Board of Pharmacy. I attest I am the Chief Executive Officer/
10 President/Treasurer/Chief Financial Officer of Colorado Pharmacy, Inc. dba Colorado Pharmacy
11 and I am fully authorized to bind Respondent to the terms of this agreement.

12
13 DATED:

08/21/20

V. Beltsky
VADIM BELITSKY,
CEO/PRESIDENT/TREASURER/CFO,
COLORADO PHARMACY dba
COLORADO PHARMACY, INC.,
Respondent

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19 I have read and fully discussed with Respondent the terms and conditions and other matters
20 contained in this Stipulated Surrender of License and Order. I approve its form and content.

21
22 DATED:

8/26/20

Rob Cucher
Rob Cucher,
Law Office of Rob D. Cucher,
Attorney for Respondent

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: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

MORGAN MALEK
Deputy Attorney General
Attorneys for Complainant

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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: 8/27/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



MORGAN MALEK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 6562

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
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5 Los Angeles, CA 90013
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Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
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12 In the Matter of the Accusation Against:

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13 **COLORADO PHARMACY, INC. DBA**
14 **COLORADO PHARMACY;**
15 **VADIM BELITSKY,**
16 **CEO/PRESIDENT/TREASURER/CFO**
2455 Colorado Blvd, Space 6
Los Angeles, CA 90041

**SECOND AMENDED
ACCUSATION**

17 **Original Permit No. PHY 52413,**

18 **MICHAEL PAUL LOWE,**
19 **Pharmacist-In-Charge**
5414 Newcastle Ave, #42
Encino, CA 91316

20 **Pharmacist License No. RPH 37609,**

21 Respondents.
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1 Complainant alleges:

2 **PARTIES**

3 1. Anne Sodergren (Complainant) brings this Second Amended Accusation solely in her
4 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
5 Consumer Affairs.

6 2. On or about May 1, 2015, the Board of Pharmacy issued Original Permit Number
7 PHY 52413 to Colorado Pharmacy, Inc. dba Colorado Pharmacy and Vadim Belitsky as Chief
8 Executive Officer/President/Treasurer/Chief Financial Officer (Respondent Pharmacy).
9 Respondent Pharmacy's Permit was in full force and effect at all times relevant to the charges
10 brought herein. The Permit was canceled on January 14, 2019, due to discontinuance of business
11 effective December 31, 2018.

12 3. On or about March 30, 1983, the Board of Pharmacy issued Pharmacist License
13 Number RPH 37609 to Michael Paul Lowe (PIC Lowe). The Pharmacist License was in full
14 force and effect at all times relevant to the charges brought herein and will expire on October 31,
15 2020, unless renewed. Board of Pharmacy records confirm Michael Paul Lowe was the
16 Pharmacist-In-Charge of Respondent Pharmacy during all times applicable to the charges brought
17 in this accusation.

18 4. Respondent Pharmacy and PIC Lowe will be collectively referred to as
19 "Respondents."

20 **Prior Discipline Against PIC Lowe**

21 5. On or about July 25, 2019, the Board issued a Decision against PIC Lowe in the case
22 entitled *In the Matter of the Accusation Against: Anatomy RX, LLC, et al.*, Board of Pharmacy
23 No. 5987, Office of Administrative Hearings Case No. 2018060116. In that case, PIC Lowe
24 entered into a stipulated settlement wherein he admitted to the multiple violations charged against
25 him, including sterile compounding violations, failure to maintain adequate records, and engaging
26 in prohibited acts by purchasing, trading and/or transferring dangerous drugs at wholesale with
27 entities in Canada and China who were not licensed with the Board. PIC Lowe stipulated to a
28

1 revocation of his Pharmacist License No. RPH 37609, with revocation stayed for four years
2 pending completion of probation under specific terms and conditions.

3 **JURISDICTION**

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

6 7. Section 4011 of the code states that the Board shall administer and enforce the
7 Pharmacy Law [Code section 4000 et seq.].

8 8. Section 4300 of the Code states in pertinent part:

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

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

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

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

16 (4) Revoking his or her license.

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

18

19 9. Section 4300.1 of the Code states:

20 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 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
22 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
23 a decision suspending or revoking the license.

24 **BUSINESS AND PROFESSIONS CODE**

25 10. Section 4006 of the Code states in pertinent part:

26 The board may adopt regulations . . . limiting or restricting the furnishing of a
particular drug upon a finding that the otherwise unrestricted retail sale of the drug . .
27 . is dangerous to the public health or safety.

28 11. Section 4022 of the Code states in pertinent part:

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

2

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

5 12. Section 4059 of the Code states in pertinent part:

6 (a) A person may not furnish any dangerous drug, except upon the
7 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor . . .

8

9
10 13. Section 4081 of the Code states in pertinent part:

11 (a) All records of manufacture and of sale, acquisition, or disposition of
dangerous drugs or dangerous devices shall be at all times during business hours
12 open to inspection by authorized officers of the law, and shall be preserved for at
least three years from the date of making. A current inventory shall be kept by
13 every . . . pharmacy . . . or establishment holding a currently valid and unrevoked
certificate, license, permit, registration, or exemption . . . who maintains a stock of
dangerous drugs or dangerous devices.

14

15 14. Section 4105 of the Code states in pertinent part:

16 (a) All records or other documentation of the acquisition and disposition of
17 dangerous drugs and dangerous devices by any entity licensed by the board shall be
retained on the licensed premises in a readily retrievable form.

18

19 (c) The records required by this section shall be retained on the licensed
20 premises for a period of three years from the date of making.

21

22 15. Section 4156 of the Code states:

23 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
24 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
25 chapter.

26 16. Section 4201 of the Code states in pertinent part:

27 (a) Each application to conduct a pharmacy . . . shall be made on a form
furnished by the board and shall state the name, address, usual occupation, and
28 professional qualifications, if any, of the applicant. If the applicant is other than a

1 natural person, the application shall state the information as to each person
2 beneficially interested therein or any person with management or control over the
3 license.

4

5 (f) Notwithstanding any other law, the pharmacy license shall authorize the
6 holder to conduct a pharmacy. The license shall be renewed annually and shall not be
7 transferable.

8

9 (j) For licenses referred to in subdivisions (f), (g), (h), and (i), any change in
10 the proposed beneficial ownership interest shall be reported to the board within 30
11 days thereafter upon a form to be furnished by the board.

12 17. Section 4301 of the Code states, in pertinent part:

13 The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

15

16 (b) Incompetence;

17 (c) Gross Negligence;

18

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

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

24

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

27

28 (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 regulator agency;

(q) Engaging in any conduct that subverts or attempts to subvert an
investigation of the board.

. . . .

18. Section 4307 of the Code states in pertinent part:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license as used in this section . . . may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

. . . .

19. Code section 4113, subdivision (c), states that “[t]he 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.”

CALIFORNIA CIVIL CODE

20. California Civil Code section 56.10, subdivision (a) states that a provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

CALIFORNIA CODE OF REGULATIONS

21. California Code of Regulations, title 16, section 1709 states in pertinent part:

. . . .

(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity

licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license.

22. California Code of Regulations, title 16, section 1718 states:

"Current inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4331. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

23. California Code of Regulations, title 16, section 1764 states:

No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.

DANGEROUS DRUGS

24. *Dermacinrx Lexitral* is a topical nonsteroidal anti-inflammatory and is available by prescription only.

25. *Dermacinrx Surgical* or *Dermacinrx Surgical Pharmapak* is a topical antibiotic and is available by prescription only.

26. *Dermasilkrx SDS Pak* is a topical steroid and is available by prescription only.

27. *Dermawerx Surgical Plus Pak* is a topical antibiotic and is available by prescription only.

28. *Vanatol LQ Oral Solution* is an oral combination drug and is available by prescription only.

29. *Xylocaine* is a local anesthetic ointment containing 5% *lidocaine* and is available by prescription only.

30. *Voltaren* gel is a topical drug containing 3% *diclofenac gel* used for pain and inflammation and is available by prescription only.

31. *Dovonex* is a calcipotriene cream (0.005%) and a topical steroid used to treat plaque psoriasis and is available by prescription only.

32. *Emla* or *Oraqix* is a lidocaine-prilocaine cream used as a local anesthetic and is available by prescription only.

33. *Fenoprofen* is used to relieve mild to moderate pain from various conditions. It also reduces pain, swelling, and joint stiffness from arthritis.

34. Under Section 4059 of the Code, each of the drugs listed in Paragraphs 22-32, and relevant to the charges brought and cited herein, are dangerous drugs as defined under Business and Professions Code, section 4022 and are available by prescription only.

COST RECOVERY

35. Business and Professions Code section 125.3 provides, in pertinent part, that a 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.

BACKGROUND

Inspection of October 27, 2017

36. On or about June 7, 2017, the Board received a complaint from RL, the office manager of an Internal Medicine/Cardiology Practice (Practice). RL advised the Board that Respondents had delivered approximately 50 bottles of medication to the Practice. The medications were in the names of various patients of the Practice, but none of the medication had been ordered by any of the physicians in the Practice.

37. RL advised Board Inspector ED that in July 2016, Respondents attempted to deliver medication to a patient of the Practice. Although the medication was prescribed by one of the Practice's physicians, it was an unscheduled delivery and therefore was refused by the patient, who also notified the Practice of the incident. When RL contacted Respondents, RL was told that the delivery was a mistake and that the patient had a similar name to another patient.

38. RL advised Inspector ED that in or around May 2017, while conducting an internal investigation regarding fraudulent Medicare billing by an employee, they located a box of high cost medications being stored in an office room which none of the physicians had issued any

prescriptions, but which Respondents had unilaterally filled. On or about July 14, 2017, Inspector ED inspected the box of medications believed to be a part of the billing fraud and being safeguarded by the Practice in a locked cabinet in one of the offices. Inspector ED identified those medications as:

<u>DRUG</u>	<u>NDC NUMBER</u>	<u>TOTAL QUANTITY</u>
Demacinrx Lexital	59088034300	10
Demacinrx Surgical	59088035300	6
Vanatol LQ Oral Solution	58809082016	11
Dermasilkrx SDS Pak	69329025001	3
Dermawerx Surgical Plus Pak	69329027001	1
Dermacinrx SilaPak	590880336700	1

39. On October 27, 2017, Inspector ED conducted an inspection of Respondents' premises. The Pharmacist-In-Charge at the time was PIC Lowe. In reviewing Respondents Patient History Reports between January 1, 2016 and October 26, 2017, Inspector ED confirmed through Respondent's dispensing reports that Respondents had filled and/or delivered to patients, multiple unauthorized prescriptions and had billed those prescriptions to patient insurance companies, including (bold entries designate the same prescription being filled multiple times):

<u>RXNO</u>	<u>Rx Date</u>	<u>Doctor</u>	<u>NDC</u>	<u>Drug</u>	<u>Quantity</u>	<u>Plan</u>
12425	6/8/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	Express Scripts
12425	7/7/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	Express Scripts
12425	8/3/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	Express Scripts
12425	9/1/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	Express Scripts
12703	6/23/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	AETNA
12665	6/22/16	Chang	58809082016	Vanatol LQ Oral Solution	946	AETNA
12665	8/9/16	Chang	58809082016	Vanatol LQ Oral	946	AETNA

				Solution		
1	12528	6/14/16	Drury	69329027001	DermaweRX Surgical Plus Pak	1 Commercial AL 610457
2	12529	6/14/16	Drury	59088034300	DermacinRX Lexitral Pharmapak	387 Commercial AL 610458
3	12571	6/16/16	Chang	59088034300	DermacinRX Lexitral Pharmapak	387 AETNA
4	12573	6/21/16	Chang	58809082016	Vanatol LQ Oral Solution	946 AETNA
5	12623	6/17/16	Drury	59088034300	DermacinRX Lexitral Pharmapak	387 AETNA
6	12622	6/21/16	Drury	58809082016	Vantol LQ Oral Solution	946 AETNA
7	12622	8/26/16	Drury	58809082016	Vantol LQ Oral Solution	946 AETNA
8	12619	6/17/16	Chang	59088034300	DermacinRX Lexitral Pharmapak	387 AETNA
9	12621	6/17//16	Chang	59088035300	DermacinRX Surgical Pharmapak	1 AETNA
10	12557	6/16/16	Chang	59088034300	DermacinRX Lexitral Pharmapak	387 AETNA
11	12560	6/16/16	Chang	59088035300	DermacinRX Surgical Pharmapak	1 AETNA
12	12534	6/15/16	Drury	59088034300	DermacinRX Lexitral Pharmapak	387 AETNA
13	12462	6/10/16	Davidson	59088034300	DermacinRX Lexitral Pharmapak	387 Secure Horizons
14	12462	7/12/16	Davidson	59088034300	DermacinRX Lexitral Pharmapak	387 Secure Horizons
15	12462	8/8/16	Davidson	59088034300	DermacinRX Lexitral Pharmapak	387 Secure Horizons
16	12409	6/8/16	Davidson	59088035300	DermacinRX Surgical Pharmapak	1 AETNA
17	12519	6/13/16	Drury	59088034300	DermacinRX Lexitral Pharmapak	387 Express Scripts
18	12488	6/13/16	Drury	59088036700	DermacinRX Silapak	1 Retainrx
19	12434	6/9/16	Chang	59088035300	DermacinRX Surgical Pharmapak	1 AETNA
20	12474	6/10/16	Davidson	58809082016	Vanatol LQ Oral Solution	946 AETNA

12474	8/4/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	AETNA
12474	7/8/16	Davidson	58809082016	Vanatol LQ Oral Solution	946	ESI
12609	6/17/16	Drury	59088035300	DermacinRX Surgical Pharmapak	1	
12527	6/14/16	Drury	69329025001	DermasilkRX SDS Pak	1	Commercial 610456
12626	6/21/16	Drury	69329025001	DermasilkRX SDS Pak	1	
12631	9/13/16	Drury	69329025001	DermasilkRX SDS Pak		
12631	6/21/16	Drury	69329025001	DermasilkRX SDS Pak	1	
12631	8/17/16	Drury	69329025001	DermasilkRX SDS Pak		
12570	6/21/16	Chang	58809082016	Vanatol LQ Oral Solution	946	Restat Suprep Coupon
12405	6/8/16	Davidson	59088034300	DermacinRX Lexitral Pharmapak	387	AETNA
12475	6/10/16	Davidson	59088035300	DermacinRX Surgical Pharmapak	1	AETNA

40. In each case above in Paragraph 38, PIC Lowe was the dispensing pharmacist.

41. During the inspection of October 27, 2017, Inspector ED requested that Respondents' manager, LO provide the Respondents' Drug Utilization Report (DUR) for the period May 1, 2015 through October 26, 2017. Respondents were unable to provide the requested reports due to alleged internet connectivity problems.

42. During the course of the inspection, Inspector ED made multiple requests for Respondents to produce copies of original prescriptions, labels and delivery manifests. When Respondents produced the requested records, Inspector ED cross referenced the prescriptions with the drugs suspected of being the subject of billing fraud described above in Paragraphs 33-36. Inspector ED determined that almost all of the drugs suspected of being a part of the billing fraud and described in Paragraphs 35-38, each were logged by Respondent Pharmacy as having been delivered to patients and had also been billed to various insurance carriers.

43. During the course of the investigation, Inspector ED noted that the DURs provided by manager LO had inconsistencies and variations. Accordingly, Inspector ED asked PIC Lowe to provide an explanation and to identify which DUR was the most accurate reflection of Respondents' disposition records. Inspector ED noted that Respondents' records were inconsistent in that some prescriptions for the drugs that were believed to be a part of the billing fraud described in Paragraphs 33-36, were reported as dispensed in the DUR, but were not listed as delivered in the delivery manifest or although a prescription copy and delivery manifest for a particular prescription had been produced by Respondents, there was no correlating dispensing record of that prescription.

44. Because of the inconsistent pharmacy records, Inspector ED conducted a patient survey of patients for whom Respondents had a confirmed delivery in the delivery manifest and patients identified on the prescriptions suspected of billing fraud as described above in Paragraphs 35-38. Fifty total surveys were mailed. Twenty-five surveys had no response. Six surveys were undeliverable. Of the 19 surveys returned, the results indicated that multiple patients never received the prescription, did not sign for the prescription, and/or the signature in the delivery manifest was not the patient's real signatures.

45. Inspector ED requested records of purchases, credits, and dispositions from drug wholesalers that provided some of the drugs being filled by Respondents between May 1, 2015 and October 26, 2017. The results of the audit showed negative variances:

<u>Drug</u>	<u>NDC</u>	<u>VARIANCE</u>
Dermacinrx-Lexitral Pharmapak	59088034300	-363
Dermacinrx-Lexitral Silapak	59088036700	-183
Dermacinrx-Surgical Pharmapak	59088035300	-140
Vanatol LQ	58809082016	-1057

46. A negative variance indicates that more prescriptions were sold/dispensed by Respondents than were purchased from wholesalers during the audit period. Thus, the audit

1 indicates that Respondents billed patient insurance and/or allegedly dispensed medication during
2 the audit period without actually having purchased the medication from wholesalers.

3 47. Under Code section 4113, subdivision (c), as the Pharmacist-In-Charge, each of the
4 alleged violations against Respondent Pharmacy are also attributable to PIC Lowe.

5 **Inspection of November 6, 2018**

6 48. On or about April 15, 2018, the Board received a complaint from Blue Shield
7 reporting that Respondent Pharmacy had been billing an abnormally high volume of prescription
8 pain cream. Blue Shield advised the Board that it suspected Respondent Pharmacy of billing
9 Blue Shield for drugs that Blue Shield members did not want or without the member's
10 knowledge.

11 49. Blue Shield indicated the top suspicious prescribers were Drs. VD, RC, NG, and JP.
12 Additionally, Blue Shield indicated that upon their own investigation, they determined that
13 patient JW had not seen Dr. VD for pain or psoriasis, had not received prescriptions from
14 Respondent Pharmacy and was not familiar with Respondent Pharmacy. Patient PH advised Blue
15 Shield that he only received two deliveries of lidocaine on April 11 and May 16, but not June 13
16 or July 13 as indicated by Respondent Pharmacy, not did Respondent Pharmacy charge PH Blue
17 Shield's \$120 co-payment.

18 50. On or about November 6, 2018, Inspector ED conducted a second inspection of
19 Respondents facility. At that time, the Pharmacist-In-Charge was PIC Lowe. Inspector ED
20 requested, and PIC Lowe provided, an Inventory-On-Hand report for *lidocaine 5% ointment*,
21 *calcipotriene 0.005%*, *diclofenac sodium gel 1%*, *diclofenac sodium gel 3%*, and the
22 Respondents' Drug Utilization Report between January 1, 2017 and November 6, 2018. PIC
23 Lowe provided a written statement to Inspector ED, confirming the reports provided were an
24 accurate reflection of Respondent Pharmacy's dispensing records.

25 51. Inspector ED requested from Respondents, and was provided with, copies of
26 Respondents prescription and delivery manifests for all prescriptions processed and dispensed to
27 patients JW and PH as well as a random sample of prescriptions written by Drs. VD, RC, and NG
28 for *lidocaine 0.5% ointment*, *calcipotriene 0.005%*, *diclofenac sodium gel 1%*, and *diclofenac*

1 *sodium gel 3%*. Inspector ED also requested Respondents acquisition records from all
2 wholesalers between January 1, 2017 and November 6, 2018, disposition records, and delivery
3 manifests for any prescriptions not provided already.

4 52. Inspector ED determined that between the period of January 1, 2017 and November
5 6, 2018, Respondent Pharmacy's most commonly dispensed medications were:

Lidocaine 5% Ointment	1,261,514 grams
Diclofenac Sodium 3% Gel	504,740 grams
Calcipotriene 0.005% Cream	400,620 grams

9 53. Auditing the period between January 1, 2017 and November 6, 2018, Inspector ED
10 determined:

<u>DRUG</u>	<u>TOTAL ACQUISITION</u>	<u>TOTAL DISPOSITION</u>	<u>VARIANCE</u>
Lidocaine 5% Ointment	627,296 grams	1,264,370 grams	-637,074 grams
Diclofenac Sodium 3% Gel	560,900 grams	507,224 grams	53,676 grams

15 54. A negative variance indicates that more prescriptions were sold/dispensed by
16 Respondents than were purchased from wholesalers during the audit period. A positive variance
17 indicates more drugs were purchased than sold by Respondents during the audit period. Thus, the
18 audit indicates that Respondents billed and allegedly dispensed 637,074 grams of *lidocaine 5%*
19 *ointment* to patients without having purchased it from wholesalers and purchased 53,676 grams of
20 *diclofenac 3% gel* from wholesalers without dispensing it.

21 55. While specifically auditing Respondent Pharmacy's prescription numbers 50398
22 relating to patient CW and 49477 relating to patient GB, Inspector ED determined that
23 Respondent Pharmacy provided Inspector ED with fraudulent dispensing records in that the
24 patients in question, confirmed neither had signed for the receipt of their prescriptions, neither
25 were expecting the medications from Respondent Pharmacy, neither had been contacted by
26 Respondent Pharmacy about the prescriptions, and the signature on the delivery manifest
27 provided by Respondent Pharmacy was not patient CW or GB's signature.

Audit Relating to Humana Complaint filed February 26, 2019

56. On or about February 26, 2019, the Board received a complaint from Humana, managed care company. The complaint reported that an internal investigation indicated that Respondent Pharmacy had issued prescriptions to Humana members, without a valid prescriber and two members had denied receiving prescriptions which were billed to Humana by Respondent Pharmacy.

57. On or about May 7, 2019, Humana provided Inspector ED with a Final Report documenting discrepancies with prescriptions filled by Respondent Pharmacy and Drs. Kesler and Farr and patients CF and GK. Humana reported that there were five instances of medications filled in Dr. Kesler's name which he denied prescribing; four instances where patient GK discrepancies in the number of times a prescription was actually filled by Respondent Pharmacy; 10 instances where patient CF verified discrepancies in the number of times a prescription was actually filled by Respondent Pharmacy; and two instances of medications filled in Dr. Farr's name which he denied prescribing.

58. On or about July 2, 2019, Inspector ED interviewed Dr. Kesler regarding Humana's contention that Respondent Pharmacy had filled prescriptions that he did not prescribe. Dr. Kesler indicated that he did not recall ever prescribing calcipotriene cream (0.005%) and confirmed that the following prescriptions were not authorized by him, as indicated by Respondent Pharmacy:

<u>RXNO</u>	<u>Rx Date</u>	<u>Doctor</u>	<u>Drug</u>	<u>Quantity</u>	<u>Plan</u>
46395	5/7/18	Kesler	Calcipotriene Cream (0.005%)	120	Health Net
46395	6/5/18	Kesler	Calcipotriene Cream (0.005%)	120	Health Net
46395	7/5/18	Kesler	Calcipotriene Cream (0.005%)	120	Health Net
48910	8/10/18	Kesler	Calcipotriene Cream (0.005%)	120	Humana
48910	7/17/18	Kesler	Calcipotriene Cream (0.005%)	120	Humana
48910	9/10/18	Kesler	Calcipotriene Cream (0.005%)	120	Humana
48910	10/12/18	Kesler	Calcipotriene	120	Humana

			Cream (0.005%)		
1	37674	5/14/18	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
2	37674	4/18/18	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
3	37674	3/20/18	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
4	37674	2/21/18	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
5	37674	1/25/18	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
6	37674	12/21/17	Kesler	Calcipotriene Cream (0.005%)	UHC of California (HMO)
7	39979	3/15/18	Kesler	Calcipotriene Cream (0.005%)	BCBS
8	39979	4/11/18	Kesler	Calcipotriene Cream (0.005%)	BCBS
9	39979	2/16/18	Kesler	Calcipotriene Cream (0.005%)	BCBS
10	39979	1/23/18	Kesler	Calcipotriene Cream (0.005%)	BCBS
11	44539	7/24/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
12	44539	6/28/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
13	44539	8/17/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
14	44539	5/30/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
15	44539	5/01/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
16	44539	4/4/18	Kesler	Calcipotriene Cream (0.005%)	Primetherapeutics
17	46586	10/16/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
18	46586	8/27/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
19	46586	7/31/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
20	46586	7/6/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
21	46586	9/20/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
22	46586	6/5/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
23	46586	5/9/18	Kesler	Calcipotriene Cream (0.005%)	Pinnacle
24					
25					
26					
27					
28					

59. Between July 9, 2019 and July 17, 2019, Inspector ED spoke with Dr. Farr and his staff regarding prescriptions filled by Respondent Pharmacy. Inspector ED confirmed the prescriptions were filled by Respondent Pharmacy as though allegedly authorized by Dr. Farr, but Dr. Farr did not prescribe them:

<u>RXNO</u>	<u>Rx Date</u>	<u>Doctor</u>	<u>Drug</u>	<u>Quantity</u>	<u>Plan</u>
40977	2/5/18	Farr	Voltaren	100	Health Net
40977	3/1/18	Farr	Voltaren	100	Health Net
40977	3/28/18	Farr	Voltaren	100	Health Net
40978	2/5/18	Farr	Calcipotriene Cream (0.005%)	120	Health Net
40978	3/1/18	Farr	Calcipotriene Cream (0.005%)	120	Health Net
40978	3/28/18	Farr	Calcipotriene Cream (0.005%)	120	Health Net
38696	3/27/18	Farr	Calcipotriene Cream (0.005%)	120	Prescript Solutions Med-D
38696	2/28/18	Farr	Calcipotriene Cream (0.005%)	120	Prescript Solutions Med-D
38696	2/2/18	Farr	Calcipotriene Cream (0.005%)	120	Prescript Solutions Med-D
38696	1/8/18	Farr	Calcipotriene Cream (0.005%)	120	Prescript Solutions Med-D
32804	1/29/18	Farr	Calcipotriene Cream (0.005%)	120	ADV/P
32804	12/8/17	Farr	Calcipotriene Cream (0.005%)	120	ADV/P
32804	10/18/17	Farr	Calcipotriene Cream (0.005%)	120	ADV/P

60. As a part of the audit into Respondent Pharmacy's practices, Inspector ED mailed surveys to patients CF and GK to inquire about the prescriptions received from Respondent Pharmacy. On July 15, 2019, Inspector ED received a phone call from patient CF who indicated although he received medications from Respondent Pharmacy, he had never authorized them to fill his prescriptions and that he had a regular pharmacy that he used, which was not Respondent Pharmacy. CF also stated that although he never ordered medication from Respondent Pharmacy, Respondent Pharmacy continued to deliver unwanted and unauthorized creams. CF advised Investigator ED that he confirmed with his provider that Respondent Pharmacy was delivering unauthorized refills.

61. On or about January 31, 2019, Inspector ED was advised by Manouchehrian that he had disassociated from Respondent Pharmacy in 2016 by selling his interest in the business to Vadim Belitsky. On or about February 11, 2019, Manouchehrian submitted documentation to substantiate his disassociation from Respondent Pharmacy in 2016. The Board has no records of any change in ownership relating to Respondent Pharmacy in 2016 or subsequent to that year.

INVESTIGATION OF FEB 21, 2019

62. On August 5, 2018, the Board received an online complaint from JC stating on July 24, 2018, Respondent Pharmacy delivered GL fenoprofen 400mg prescription to her home in error. JC explained that on July 24, 2018, GL's prescription was left hanging on her door. GL was the former owner of JC's home and JC moved in on June 1, 2018.

63. On July 27, JC called Respondent Pharmacy and left a message stating they delivered GL's prescription to the wrong house. On July 30, 2018, Respondent Pharmacy called her back stating they would pick up the prescription within three days and JC left the prescription hanging on her door. On August 2, 2018, the prescription was still not picked up and JC called Respondent Pharmacy stating she would only leave it on her door for one more day. She was told that they tried to pick it up earlier in the week, however, they were unable to find her house. Respondent Pharmacy picked up the prescription the next day.

64. On January 17, 2019, Inspector A.Y. spoke with JC who stated she submitted the complaint as a concerned citizen. She was concerned GL's prescription would get into the wrong hands and accordingly, she contacted Respondent Pharmacy. JC explained that she informed Respondent Pharmacy of the delivery error, however, Respondent Pharmacy failed to pick it up for several days. Later that day, JC e-mailed Inspector A.Y. the photographs of GL's prescription and copies of the delivery paperwork.

65. On February 4, 2019, Inspector A.Y. called and left a message for PIC Lowe to contact her. She contacted Respondent Pharmacy's owner, Vadim Belitsky, and informed him about JC's complaint. Mr. Belitsky stated it was unbelievable JC complained even after the pharmacy picked up the incorrectly delivered prescription. Mr. Belitsky stated mistakes could happen. Inspector A.Y. explained the delivery error was a patient prescription privacy violation

1 and that she would be issuing a written notice to the Respondent Pharmacy and PIC Lowe. She
2 requested a written statement in response to the notice within 14 days. Inspector A.Y. asked Mr.
3 Belitsky if he was still in contact with PIC Lowe, and he stated yes. She informed him that she
4 left a voice mail message for PIC Lowe. Inspector A.Y requested Mr. Belitsky to inform PIC
5 Lowe of the complaint and written notice being issued. Later that day, she sent a written notice of
6 non-compliance to Respondent Pharmacy and PIC Lowe for the following violation: 16 CCR
7 1764, and Civ. Code section 56.10(a) in that, on or about July 24, 2018, while PIC Lowe was the
8 pharmacist-in-charge, Respondent Pharmacy incorrectly delivered GL's fenoprofen 400mg
9 Rx:#49129 to JC, without GL's authorization, therefore, Respondent disclosed GL's prescription
10 information to an unauthorized individual.

11 66. On February 18, 2019, Inspector A.Y. received a signed faxed copy of Respondent
12 Pharmacy's written notice. PIC Lowe signed the notice and stated drivers were retrained on
13 delivery procedures and HIP AA (Health Insurance Portability and Affordability Act)
14 compliance.

15 **FIRST CAUSE FOR DISCIPLINE**
16 **(Furnishing Dangerous Drugs without a Prescription)**

17 67. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
18 License are subject to disciplinary action under Code section 4301(f), 4301(g), 4301(j), and
19 4301(o) in that Respondents violated Code section 4059(a) by dispensing prescriptions for
20 dangerous drugs without a prescriber's authorization, including *Dermacinrx Lexitral*, *Dermacinrx*
21 *Surgical*, *Dermasilkrx SDS Pak*, *Dermawerx Surgical Plus Pak*, *Vanatol LQ Oral Solution*,
22 *Voltaren*, *calfipotriene cream*, and *lidocaine-prilocaine* as set forth more particularly in
23 Paragraphs 36 through 66.

24 **SECOND CAUSE FOR DISCIPLINE**
25 **(Conduct Involving Moral Turpitude, Dishonesty,**
26 **Fraud, Deceit, or Corruption – Billing Fraud)**

27 68. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
28 License are subject to disciplinary action under Code section 4301(f) and 4301(g) in that
Respondents engaged in conduct that involved moral turpitude, dishonesty, fraud, deceit, or

1 corruption by knowingly charging patient insurance carriers for unauthorized prescriptions as set
2 forth more particularly in Paragraphs 36 through 66.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Conduct Involving Moral Turpitude, Dishonesty,**
5 **Fraud, Deceit, or Corruption – Producing**
6 **Fraudulent Records to Board Inspector)**

6 69. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
7 License are subject to disciplinary action under Code section 4301(f) and 4301(g) in that
8 Respondents engaged in conduct that involved moral turpitude, dishonesty, fraud, deceit, or
9 corruption by knowingly providing Inspector ED with fraudulent dispensing and delivery records
10 and fraudulent delivery manifests with fraudulent patient signatures relating to prescription
11 numbers 50398 regarding patient CW and 49477 regarding patient GB, as set forth more
12 particularly in Paragraphs 36 through 66.

13 **FOURTH CAUSE FOR DISCIPLINE**
14 **(Failure to Keep Accurate Acquisition and Disposition Records)**

15 70. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
16 License are subject to disciplinary action under Code section 4301(j) and 4301(o) in that
17 Respondents violated Code section 4081(a), 4105(a), and 4105(c) by failing to keep for at least
18 three years, and/or make available for inspection, its records of manufacture, sale, acquisition,
19 receipt, shipment, or disposition of dangerous drugs and as set forth more particularly in
20 Paragraphs 36 through 66.

21 **FIFTH CAUSE FOR DISCIPLINE**
22 **(Failure to Maintain Current Inventory)**

23 71. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
24 License are subject to disciplinary action under Code section 4301(j) and 4301(o) in that
25 Respondents violated Code section 4081(a) by failing to keep a current inventory of all dangerous
26 drugs for at least three years as set forth more particularly in Paragraphs 36 through 66.

27 **SIXTH CAUSE FOR DISCIPLINE**
28 **(Subverting an Investigation)**

1 72. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
2 License are subject to disciplinary action under Code section 4301(q) in that Respondents
3 subverted and/or attempted to subvert the investigation of Inspector ED by knowingly providing
4 Inspector ED with fraudulent dispensing records and fraudulent Delivery Manifest records and as
5 set forth more particularly in Paragraphs 36 through 66.

6 **SEVENTH CAUSE FOR DISCIPLINE**
7 **(Failing to Report Change in Beneficial Ownership)**

8 73. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
9 License are subject to disciplinary action under Code section 4301(o) in that Respondents
10 violated Code section 4201(a) and 4201(j) by not reporting to the Board within 30-days, a change
11 in the beneficial ownership interest of Respondent Pharmacy and as set forth more particularly in
12 Paragraphs 36 through 66.

13 **EIGHTH CAUSE FOR DISCIPLINE**
14 **(Disclosing Medical Information without Authorization)**

15 74. Respondent Pharmacy's Original Permit and Respondent PIC Lowe's Pharmacist
16 License are subject to disciplinary action under California Code of Regulations, Title 16, section
17 1764, and California Civil Code section 56.10, subsection (a), in that on or about July 24, 2018,
18 Respondents violated California Code of Regulations, Title 16, section 1764, and California Civil
19 Code section 56.10, subsection (a), by disclosing medical information regarding a patient of the
20 provider of health care without first obtaining an authorization, as set forth more particularly in
21 Paragraphs 36 through 66.

22 **OTHER MATTERS**

23 75. Under Code section 4307, if discipline is imposed on Original Permit Number PHY
24 52413 issued to Colorado Pharmacy, Inc. dba Colorado Pharmacy and Vadim Belitsky as Chief
25 Executive Officer/President/Treasurer/Chief Financial Officer, Vadim Belitsky shall be
26 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
27 or partner of a licensee for five years if Original Permit Number PHY 52413 is placed on
28 probation, or until Original Permit Number PHY 52413 is reissued or reinstated, if it is revoked.

1 **MATTERS IN AGGRAVATION**

2 76. To determine the degree of discipline to be assessed against Respondent PIC Lowe,
3 the Board issued a Decision and Order, which became effective on July 25, 2019, adopting a
4 Stipulated Settlement and Disciplinary Order revoking PIC Lowe's Pharmacist License No. RPH
5 37609, with revocation stayed for four years pending completion of probation under specific
6 terms and conditions.

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 Permit Number PHY 52413, issued to Colorado Pharmacy,
11 Inc. dba Colorado Pharmacy and Vadim Belitsky;

12 2. Revoking or suspending Pharmacist License Number RPH 37609, issued to Michael
13 Paul Lowe;

14 3. Prohibiting Vadim Belitsky from serving as a manager, administrator, owner,
15 member, officer, director, associate, or partner of a licensee for five years if Original Permit
16 Number PHY 52413 is placed on probation or until Original Permit Number PHY 52413 is
17 reissued or reinstated if Original Permit Number PHY 52413 is revoked;

18 4. Ordering Colorado Pharmacy, Inc. dba Colorado Pharmacy and Vadim Belitsky, and
19 Michael Paul Lowe to wholly and separately pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and,

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

23
24 DATED: August 5, 2020

Anne Sodergren

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