

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

In the Matter of the Accusation Against:

**LONG'S DRUGS CALIFORNIA, LLC dba
CVS PHARMACY #3944, Respondent**

Pharmacy Permit No. PHY 49620

Agency Case No. 6740

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval 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 February 18, 2021.

It is so ORDERED on January 19, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name and title.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6740

13 **LONG'S DRUGS CALIFORNIA, LLC**
14 **DBA CVS PHARMACY #3944**
15 **1520 E. F Street**
Oakdale, CA 95361

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

[Bus. & Prof. Code § 495]

16 **Pharmacy Permit No. PHY 49620**

17 Respondent.

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

20 **PARTIES**

21 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
22 (Board). She brought this action solely in her official capacity and is represented in this matter by
23 Xavier Becerra, Attorney General of the State of California, by Kristina T. Jarvis, Deputy
24 Attorney General.

25 2. Respondent Long's Drugs California, LLC doing business as (dba) CVS Pharmacy
26 #3944 (Respondent) is represented in this proceeding by attorney Jeff J. Astarabadi, Much
27 Shelist, P.C., 2 Park Plaza, Suite 1075, Irvine, CA 92614.

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3. On or about November 10, 2008, the Board issued Pharmacy Permit No. PHY 49620 to Long's Drugs California, LLC dba CVS Pharmacy #3944 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 6740 and will expire on November 1, 2020, unless renewed.

JURISDICTION

4. Accusation No. 6740 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 5, 2019. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 6740 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6740. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand.

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

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 6744, if proven at a hearing, constitute cause for imposing discipline upon its Pharmacy Permit.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest those charges.

10. Respondent agrees that its Pharmacy Permit is subject to discipline and they agree to be bound by the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they 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 Settlement and Disciplinary Order for Public Reprimand 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.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 49620 issued to Respondent
6 Long's Drugs California, LLC dba CVS Pharmacy #3944 (Respondent) shall be publicly reprovod
7 by the Board of Pharmacy under Business and Professions Code section 495 in resolution of
8 Accusation No. 6740, attached as exhibit A.

9 The Board of Pharmacy expresses its disapproval specifically for the issues underlying this
10 case; to wit, Respondent's management and treatment of "floating" licensed staff members, both
11 pharmacist and pharmacy technician, and Respondent's lack of oversight and supervision of such
12 staff that allowed such thefts to be possible.

13 **Cost Recovery.** Respondent shall pay \$4,154.25 to the Board for its costs associated with
14 the investigation and enforcement of this matter. Respondent shall be permitted to pay these
15 costs in a payment plan approved by the Board. If Respondent fails to pay the Board costs as
16 ordered, Respondent shall not be allowed to renew their Pharmacy Permit until Respondent pays
17 costs in full.

18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
20 Reproval and have fully discussed it with my attorney, Jeff J. Astarabadi. I understand the
21 stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated
22 Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently,
23 and agree to be bound by the Decision and Order of the Board of Pharmacy.

24
25 DATED: 12/01/20


26 LONG'S DRUGS CALIFORNIA, LLC
27 DBA CVS PHARMACY #3944
28 Respondent

///

1 I have read and fully discussed with Respondent Long's Drugs California, LLC dba CVS
2 Pharmacy #3944 the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order for Public Reapproval. I approve its form and content.

4
5 DATED: _____

JEFF J. ASTARABADI
Attorney for Respondent

7
8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby
10 respectfully submitted for consideration by the Board of Pharmacy of the Department of
11 Consumer Affairs.

12 DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
KAREN R. DENVIR
Supervising Deputy Attorney General

KRISTINA T. JARVIS
Deputy Attorney General
Attorneys for Complainant

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1 I have read and fully discussed with Respondent Long's Drugs California, LLC dba CVS
2 Pharmacy #3944 the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order for Public Reapproval. I approve its form and content.

4
5 DATED: 12/2/20



JEFF J. ASTARABADI
Attorney for Respondent


6
7
8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby
10 respectfully submitted for consideration by the Board of Pharmacy of the Department of
11 Consumer Affairs.

12 DATED: 12/2/2020

Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 KAREN R. DENVIR
Supervising Deputy Attorney General

16 
17 KRISTINA T. JARVIS
18 Deputy Attorney General
19 *Attorneys for Complainant*
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Exhibit A

Accusation No. 6740

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 MABEL LEW
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6740

13 **LONGS DRUG STORES CALIFORNIA, LLC**
14 **DBA CVS PHARMACY # 3944**
15 **1520 E. F Street**
16 **Oakdale, CA 95361**

ACCUSATION

17 **Pharmacy Permit No. PHY 49620**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about November 10, 2008, the Board issued Original Permit Number PHY
25 49620 to Longs Drug Stores California, LLC, to do business as CVS Pharmacy # 3944
26 (“Respondent”), which is located at 1520 E. F Street, Oakdale, California. The pharmacy permit
27 was in full force and effect at all times relevant to the charges brought in the Accusation and will
28 expire on November 1, 2019, unless renewed.

JURISDICTION

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

4. Code section 118 states, in pertinent part:

....

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

....

5. Code section 4011 states that the board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 1 (commencing with Section 11000) of the Health and Safety Code).

6. Code section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

7. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or

1 action or disciplinary proceeding against, the licensee or to render a decision suspending
2 or revoking the license.

3 8. Code section 4301 states, in pertinent part:

4 The board shall take action against any holder of a license who is guilty
5 of unprofessional conduct or whose license has been procured by fraud or
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
7 not limited to, any of the following:

8

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

11

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

16

17 9. Code section 4307 (a) states in pertinent part:

18 Any person who has been denied a license or whose license has been revoked
19 or is under suspension, or who has failed to renew his or her license while it was under
20 suspension, or who has been a manager, administrator, owner, member, officer, director,
21 associate, partner, or any other person with management or control of any partnership,
22 corporation, trust, firm, or association whose application for a license has been denied or
23 revoked, is under suspension or has been placed on probation, and while acting as the
24 manager, administrator, owner, member, officer, director, associate, partner, or any other
25 person with management or control had knowledge of or knowingly participated in any
26 conduct for which the license was denied, revoked, suspended, or placed on probation,
27 shall be prohibited from serving as a manager, administrator, owner, member, officer,
28 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 issued
or where an existing license is placed on probation, this prohibition shall remain in effect
for a period not to exceed five years.

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

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1 14. Title 21, United States Code, Section 802 states in pertinent part:

2 (6) The term “controlled substance” means a drug or other substance, or
3 immediate precursor included in schedule I, II, III, IV, or V.

4

5 **COST RECOVERY**

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

10 **DRUG CLASSIFICATIONS**

11 16. Drug Classifications:

12	13	14	15	16	17
	Brand Name	Generic Name	Dangerous Drug Per Business & Professions Code § 4022	Controlled Substance Per Health & Safety Code	Indications for Use
18	Soma	carisoprodol	Yes	No – per H&S Yes – Schedule IV per CFR §1308.14(c)(6)	Muscle relaxant

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1 **STATEMENT OF FACTS**

2 17. On or after July 9, 2018, the Board received notification from CVS Health¹ that an
3 investigation into employee drug diversion revealed that Nathan Lytle-Pinhey² a “floating”
4 Pharmacy Technician who worked at various CVS Pharmacies on an “as needed” basis, admitted
5 to diverting for self-use about 850 pills of carisoprodol 350 mg from Respondent and other CVS
6 pharmacies he floated at. Included in the notification was Respondent’s Report of Theft or Loss
7 of Controlled Substances (DEA Form 106), which revealed a loss of 200 tablets of carisoprodol
8 350 mg (“drug loss”).

9 18. On or about January 9, 2019, a Board Inspector conducted an investigation into
10 Respondent’s drug loss. The Inspector reviewed Respondent’s audit documents of the drug loss
11 between May 1, 2017 and January 9, 2019, and Respondent’s Report of Theft or Loss of
12 Controlled Substances (DEA Form 106). As a result, the investigation found that Respondent
13 failed to adequately secure its drug stock, a violation of pharmacy law.

14 **CAUSE FOR DISCIPLINE**

15 **(Failure to Secure and Maintain Pharmacy Facilities)**

16 19. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
17 and (o), in conjunction with California Code of Regulations title 16, section 1714, subdivision
18 (b), in that Respondent failed to maintain its facilities, space, fixtures, and equipment so that
19 drugs in its stock were safely maintained and secured. An investigation, subsequent to a report of
20 employee diversion, found that between May 1, 2017 and January 9, 2019, Respondent failed to
21

22
23 ¹ CVS Health Corporation is an integrated pharmacy healthcare company whose
subsidiaries are the CVS Pharmacy stores, including Respondent.

24 ² In an investigation into the drug losses, CVS Pharmacy Technician Nathan Lytle-Pinhey
25 admitted to CVS District Asset Protection Leader, C.M., that while working as a Pharmacy
26 Technician at various CVS Pharmacies, he diverted 850 tablets of carisoprodol 350mg for self-
27 use from CVS Pharmacies in Riverbank and in Turlock for approximately 6-7 months prior to
28 July 2018. He also admitted that he was able to divert the drugs in his pockets and bags at
“chaotic stores/work environments”, “very busy pharmacies”, and at pharmacies that were “2-3
days behind in workload”. At the conclusion of the investigation, he was terminated from CVS.
Pursuant to a stipulation with the Board, he has since surrendered his pharmacy technician license
(TCH 37626).

1 secure and maintain pharmacy facilities from diversion, theft, or other lapses which resulted in
2 the drug loss set forth in paragraphs 17-18.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Accurate Inventory of Dangerous Drugs and Controlled Substances)**

5 20. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
6 and (o), in conjunction with Code sections 4081, subdivision (a), and 4105, in that it failed to
7 maintain an accurate inventory of dangerous drugs and controlled substances. Specifically,
8 during the above-mentioned inspection and investigation, Respondent provided a final
9 reconciliation of the drug loss, which revealed a lesser amount in stock than was accounted for by
10 records required by law, as set forth in paragraphs 17-18.

11 **OTHER MATTERS**

12 21. Pursuant to Code section 4307, if discipline is imposed on Original Permit Number
13 PHY 49620 to Longs Drug Stores California, LLC, to do business as CVS Pharmacy # 3944,
14 Longs Drug Stores California, LLC, shall be prohibited from serving as a manager, administrator,
15 owner, member, officer, director, associate, or partner of a licensee for five years if Original
16 Permit Number PHY 49620 is placed on probation or until Original Permit Number PHY 49620
17 is reinstated if it is revoked.

18 **PRAYER**

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

- 21 1. Revoking or suspending Original Permit Number PHY 49620, issued to Longs Drug
22 Stores California, LLC, to do business as CVS Pharmacy # 3944;
- 23 2. Prohibiting Longs Drug Stores California, LLC, from serving as a manager,
24 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
25 Original Permit Number PHY 49620 is placed on probation or until Original Permit Number
26 PHY 49620 is reinstated if Original Permit Number PHY 49620 issued to Longs Drug Stores
27 California, LLC, is revoked;
- 28

1 3. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

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

5
6 DATED: October 31, 2019



7 ANNE SODERGREN
8 Interim Executive Officer
9 Board of Pharmacy
10 Department of Consumer Affairs
11 State of California
12 *Complainant*