

**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 #9919, Respondent**

Pharmacy Permit No. PHY 49371

Agency Case No. 6741

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand 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 November 25, 2020.

It is so ORDERED on October 26, 2020.

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
Deputy Attorney General
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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. 6741

13 **LONG'S DRUGS CALIFORNIA, LLC**
14 **DBA CVS PHARMACY #9919**
15 **1621 Lander Avenue**
Turlock, CA 95380

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

16 **Pharmacy Permit No. PHY 49371**

[Bus. & Prof. Code § 495]

17 Respondent.

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

21 **PARTIES**

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

26 2. Respondent Long's Drugs California, LLC dba CVS Pharmacy #9919 (Respondent) is
27 represented in this proceeding by attorney Jeff J. Astarabadi, Much Shelist, P.C., 2 Park Plaza,
28 Suite 1075, Irvine, CA 92614.

3. On or about November 10, 2008, the Board issued Pharmacy Permit No. PHY 49371 to Long's Drugs California, LLC dba CVS Pharmacy #9919 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 6741 and will expire on November 1, 2020, unless renewed.

JURISDICTION

4. Accusation No. 6741 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. 6741 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. 6741. 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. 6741, 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.

///

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 49371 issued to Respondent
6 Long's Drugs California, LLC dba CVS Pharmacy #9919 (Respondent) shall be publicly reprovod
7 by the Board of Pharmacy under Business and Professions Code section 495 in resolution of
8 Accusation No. 6741, attached as exhibit A.

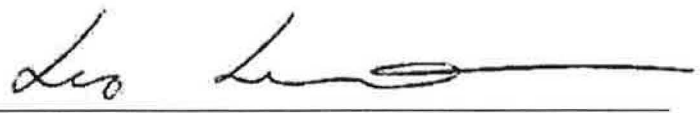
9 The Board of Pharmacy expresses its disapproval specifically for the issues underlying this
10 case; to wit, Respondent's management and treatment of "floating" licensed staff members, both
11 pharmacist and pharmacy technician, and Respondent's lack of oversight and supervision of such
12 staff that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

13 **Cost Recovery.** Respondent shall pay \$3,925.00 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 Repraval 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 Repraval voluntarily, knowingly, and intelligently,
23 and agree to be bound by the Decision and Order of the Board of Pharmacy.

24
25 DATED: 8/11/2020

26 
27 LONG'S DRUGS CALIFORNIA, LLC DBA CVS
28 PHARMACY #9919
Respondent

///

1 I have read and fully discussed with Respondent Long's Drugs California, LLC dba CVS
2 Pharmacy #9919 the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

4
5 DATED: 8/12

JEFF J. ASTARABADI
Attorney for Respondent

6
7
8 **ENDORSEMENT**

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

12 DATED: _____

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
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 #9919 the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

4
5 DATED: _____

JEFF J. ASTARABADI
Attorney for Respondent

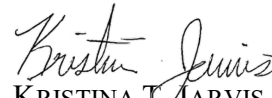
7
8 **ENDORSEMENT**

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

12 DATED: 9/24/2020

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
Attorneys for Complainant

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Exhibit A

Accusation No. 6741

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 MABEL LEW
Deputy Attorney General
4 State Bar No. 158042
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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. 6741

13 **LONGS DRUG STORES CALIFORNIA**
14 **DBA CVS PHARMACY # 09919**
15 **1621 Lander Avenue**
16 **Turlock, CA 95380**

ACCUSATION

17 **Pharmacy Permit No. PHY 49371**

18 Respondents.

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 49371 to Longs Drug Stores California, to do business as CVS Pharmacy # 09919
26 (“Respondent”), which is located at 1621 Lander Avenue, in Turlock, California. The pharmacy
27 permit was in full force and effect at all times relevant to the charges brought in the Accusation
28 and will 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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STATUTORY AND REGULATORY PROVISIONS

10. Code section 4081 states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours 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 every ... pharmacy ... who maintains a stock of dangerous drugs or dangerous devices.

....

11. Title 16, California Code of Regulations ("CCR"), section 1714 states, in pertinent part:

....

"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be sufficient size and unobstructed area to accommodate the safe practice of pharmacy."

....

12. CCR 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 Section 4081 and 4332. 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.

13. Title 21, Code of Federal Regulations ("CFR"), part 1308, Section 14 (21 CFR 1308.14) states in pertinent part:

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

....

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

....

(6) Carisoprodol.

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 Brand Name	Generic Name	Dangerous Drug Per Business & Professions Code § 4022	Controlled Substance Per Health & Safety Code	Indications for Use
14 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 about August 10, 2018, the Board received notification from CVS Health¹ that
3 an 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 367 tablets of carisoprodol
8 350 mg (“drug loss”).

9 18. On or about September 28, 2018, 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 August 13, 2018, and considered the August 21, 2018 statement from
12 CVS District Leader M. Fretz that a thorough search of Respondent’s physical inventory, waiting
13 bin, drug movement reports, and invoices could not explain the drug loss. As a result, the
14 investigation found that Respondent failed to adequately secure its drug stock, a violation of
15 pharmacy law.

16 **FIRST CAUSE FOR DISCIPLINE**

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

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

22 ¹ CVS Health Corporation is an integrated pharmacy healthcare company whose
23 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 CVS
Pharmacy #2994 in Turlock and CVS Pharmacy #3079 in Riverbank, due to “chaotic stores/work
environments”, “pharmacies being very busy”, 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 employee diversion, found that between May 1, 2017 and August 13, 2018, Respondent failed to
2 secure and maintain pharmacy facilities from diversion, theft, or other lapses which resulted in
3 the drug loss set forth in paragraphs 17-18.

4 **SECOND CAUSE FOR DISCIPLINE**

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

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

12 **MATTERS IN AGGRAVATION**

13 21. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges:

15 a. On or about November 16, 2017, the Board issued Citation Number CI 2016 73830³
16 to Respondent for a violation of CCR, Title 16, Section 1707.2 subdivision (b)(1)(B)⁴ (Failure to
17 Provide Oral Consultation To Patient On New Prescription).

18 b. On or about November 20, 2015, the Board issued a Citation and Fine Number
19 CI 2013 60970⁵ to Respondent for violations of CCR title 16, section 1764/Civil Code section
20 56.10 subdivision (a)⁶ (\$500 Fine) (Unauthorized Disclosure of Prescription and Medical
21 Information), and Business & Professions Code section 4081, subdivision (a)/CCR title 16,
22 section 1718⁷ (\$2,500 Fine) (Failure to Maintain Records).

23 ///

24 ³ Board records indicate that this citation has been completed.

25 ⁴ CCR title 16, section 1707.2(b)(1)(B) states in pertinent part: A pharmacist shall
26 provide oral consultation to his or her patient or the patient's agent whenever a prescription drug
not previously dispensed to a patient in the same dosage form, strength or with the same written
direction, is dispensed by the pharmacy.

27 ⁵ Board records indicate that this citation has been paid.

28 ⁶ Unauthorized disclosure of prescription and medical information.

⁷ Records of Dangerous Drugs and Devices Kept Open for Inspection: Maintenance of
Records, Current Inventory/Current Inventory Defined.

1 **OTHER MATTERS**

2 22. Pursuant to Code section 4307, if discipline is imposed on Original Permit Number
3 PHY 54149 to Longs Drug Stores California, to do business as CVS Pharmacy # 09919, Longs
4 Drug Stores California shall be prohibited from serving as a manager, administrator, owner,
5 member, officer, director, associate, or partner of a licensee for five years if Original Permit
6 Number PHY 49371 is placed on probation or until Original Permit Number PHY 49371 is
7 reinstated if it is revoked.

8 **PRAYER**

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

11 1. Revoking or suspending Original Permit Number PHY 49371, issued to Longs Drug
12 Stores California, to do business as CVS Pharmacy # 09919;

13 2. Prohibiting Longs Drug Stores California from serving as a manager, administrator,
14 owner, member, officer, director, associate, or partner of a licensee for five years if Original
15 Permit Number PHY 49371 is placed on probation or until Original Permit Number PHY 49371
16 is reinstated if Original Permit Number PHY 49371 issued to Longs Drug Stores California is
17 revoked;

18 3. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and

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

22
23 DATED: October 31, 2019



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