

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

In the Matter of the Accusation Against:

**GARFIELD BEACH CVS, LLC dba
CVS PHARMACY #16082, Respondent**

Pharmacy Permit No. PHY 54223

Agency Case No. 6746

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 M. 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
4 State Bar No. 258229
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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. 6746

13 **GARFIELD BEACH CVS, LLC**
14 **DBA CVS PHARMACY # 16082**
15 **3405 McHenry Avenue**
Modesto, CA 95350

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

16 **Pharmacy Permit No. PHY 54223**

[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 Garfield Beach CVS, LLC doing business as (dba) CVS Pharmacy
27 #16082 (Respondent) is represented in this proceeding by attorney Jeff J. Astarabadi, Much
28 Shelist, P.C., 2 Park Plaza, Suite 1075, Irvine, CA 92614.

3. On or about December 16, 2015, the Board issued Pharmacy Permit No. PHY 54223 to Garfield Beach CVS, LLC dba CVS Pharmacy #16082 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 6746 and will expire on June 1, 2021, unless renewed.

JURISDICTION

4. Accusation No. 6746 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. 6746 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. 6746. 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. 6746, 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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14. 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 54223 issued to Respondent Garfield Beach CVS, LLC dba CVS Pharmacy #16082 (Respondent) shall be publicly reprovod by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No. 6746, attached as exhibit A.

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

Cost Recovery. Respondent shall pay \$3,507.25 to the Board for its costs associated with the investigation and enforcement of this matter. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. If Respondent fails to pay the Board costs as ordered, Respondent shall not be allowed to renew their Pharmacy Permit until Respondent pays costs in full.

ACCEPTANCE

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

DATED:

GARFIELD BEACH CVS, LLC
CVS PHARMACY #16082
Respondent

///

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 54223 issued to Respondent
6 Garfield Beach CVS, LLC dba CVS Pharmacy #16082 (Respondent) shall be publicly reprovved
7 by the Board of Pharmacy under Business and Professions Code section 495 in resolution of
8 Accusation No. 6746, 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 \$3,507.25 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: 8/11/2020


26 GARFIELD BEACH CVS, LLC
27 CVS PHARMACY #16082
28 Respondent

///

1 I have read and fully discussed with Respondent Garfield Beach CVS, LLC dba CVS
2 Pharmacy #16082 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 DATED: 8/12

JEFF F. ASTARABADI
Attorney for Respondent

6
7 **ENDORSEMENT**

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

11 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 Garfield Beach CVS, LLC dba CVS
2 Pharmacy #16082 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 DATED: _____

JEFF F. ASTARABADI
Attorney for Respondent


6
7 **ENDORSEMENT**

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

11 DATED: 9/24/2020

Respectfully submitted,

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

15 
16 KRISTINA T. JARVIS
17 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6746

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Attorney General of California
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Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
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12 In the Matter of the Accusation Against:

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13 **GARFIELD BEACH CVS, LLC DBA**
14 **CVS PHARMACY # 16082**
15 **3405 McHenry Avenue**
16 **Modesto, CA 95350**

ACCUSATION

17 **Pharmacy Permit No. PHY 54223**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about December 16, 2015, the Board issued Original Permit Number PHY
24 54223 to Garfield Beach CVS, LLC to do business as CVS Pharmacy # 16082 (“Respondent”),
25 which is located at 3405 McHenry Avenue, Modesto, California. The pharmacy permit was in
26 full force and effect at all times relevant to the charges brought in the Accusation and will expire
27 on June 1, 2020, unless renewed.
28

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 requires 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.

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

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

....

COST RECOVERY

15. 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.

DRUG CLASSIFICATIONS

16. Drug Classifications:

Brand Name	Generic Name	Dangerous Drug Per Business & Professions Code § 4022¹	Controlled Substance Per Health & Safety Code	Indications for Use
Xanax	alprazolam	Yes	Yes – Schedule IV per H&S §11057(d)(1)	Anxiety
Soma	carisoprodol	Yes	No – per H&S Yes – Schedule IV per CFR §1308.14(c)(6)	Muscle relaxant
Valium	diazepam	Yes	Yes – Schedule IV per H&S §11057(d)(9)	Anxiety
Percolone/ Roxicodone	oxycodone	Yes	Yes – Schedule II per H&S §11055(b)(1)	Pain

¹ Code section 4060 states, in pertinent part:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6....

STATEMENT OF FACTS

17. Beginning on July 9, 2018, and thereafter, the Board received notification from CVS Health² that an investigation into employee drug diversion revealed that Nathan Lytle-Pinhey³ a “floating” Pharmacy Technician who worked at various CVS Pharmacies on an “as needed” basis, admitted to diverting for self-use about 850 pills of carisoprodol 350 mg from Respondent and other CVS pharmacies he floated at. Included in the notification was Respondent’s Report of Theft or Loss of Controlled Substances (DEA Form 106), which revealed a loss of 166 tablets of carisoprodol 350 mg (“drug loss”).

18. On January 8, 2019, a Board Inspector conducted an inspection and a follow-up investigation into the Respondent’s controlled substance prescription practices related to the drug loss⁴. Using the totality of the information from his audit, and besides the drug loss, he determined that Respondent had a lesser amount in stock of the following controlled substance in stock than their records indicated:

Drug	Short
oxycodone 30 mg	-5

Based upon his inspection and investigation, including the drug loss, the Board Inspector found that Respondent failed to adequately secure its drug stock, a violation of pharmacy law.

² CVS Health Corporation is an integrated pharmacy healthcare company whose subsidiaries are the CVS Pharmacy stores, including Respondent.

³ In an investigation into the drug losses, CVS Pharmacy Technician Nathan Lytle-Pinhey admitted to CVS District Asset Protection Leader, C.M., that while working as a Pharmacy Technician at various CVS Pharmacies, he diverted 850 tablets of carisoprodol 350mg for self-use from CVS Pharmacies in Riverbank and in Turlock for approximately 6-7 months prior to 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).

⁴ He audited a select group of controlled substances, used the 2017 controlled substance inventories as the starting point for drug audits, observed the pharmacist-in-charge’s count of the pharmacy’s stock on hand, used the acquisition and disposition data for the audited controlled substances from May 1, 2017 through January 9, 2019 to complete the audit.

1 **FIRST CAUSE FOR DISCIPLINE**

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

3 19. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
4 and (o), in conjunction with California Code of Regulations title 16, section 1714, subdivision
5 (b), in that Respondent failed to maintain its facilities, space, fixtures, and equipment so that
6 drugs in its stock were safely maintained and secured. Specifically, an inspection and
7 investigation, subsequent to a report of employee diversion, found that on or about and between
8 May 1, 2017 to January 9, 2019, Respondent failed to secure and maintain pharmacy facilities
9 from diversion, theft, or other lapses which resulted in the drug losses set forth in paragraphs 17-
10 18,

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 20. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
14 and (o), in conjunction with Code sections 4081, subdivision (a), and 4105, in that it failed to
15 maintain an accurate inventory of dangerous drugs and controlled substances. Specifically,
16 during the above-mentioned inspection and investigation, an audit of the above-mentioned
17 dangerous drugs/controlled substances revealed a lesser amount in stock than was accounted for
18 by records required by law, as set forth in paragraphs 17-18.

19 **OTHER MATTERS**

20 21. Pursuant to Code section 4307, if discipline is imposed on Original Permit Number
21 PHY 54223 to Garfield Beach CVS, LLC to do business as CVS Pharmacy # 16082, Garfield
22 Beach CVS, LLC shall be prohibited from serving as a manager, administrator, owner, member,
23 officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY
24 54223 is placed on probation or until Original Permit Number PHY 54223 is reinstated if it is
25 revoked.

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27 ///

28 ///

PRAYER

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

1. Revoking or suspending Original Permit Number PHY 54223, issued to Garfield Beach CVS, LLC to do business as CVS Pharmacy # 16082;
2. Prohibiting Garfield Beach CVS, LLC from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY 54223 is placed on probation or until Original Permit Number PHY 54223 is reinstated if Original Permit Number PHY 54223 issued to Garfield Beach CVS, LLC is revoked;
3. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: October 31, 2019



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