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

In the Matter of the Accusation Against:

TEN PHARMACY INC. DBA TEN PHARMACY,
JACQUELINE DUVAL VU,
Permit No. PHY 53619,

and

JACQUELINE DUVAL VU,
Pharmacist No. RPH 56257,

and

LUKE DUVAL VU,
Pharmacist No. RPH 54277,

and

DRUG DEPOT PHARMACY INC.
Permit No. PHY 50418,

Respondents.

Agency Case No. 6796

OAH No. 2020060475

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 January 5, 2022.

It is so ORDERED on December 6, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Seung W. Oh, Pharm.D.
Board President

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General
KEVIN RIGLEY
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Attorneys for Complainant

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

In the Matter of the Accusation Against**:**	Case No. 6796
TEN PHARMACY INC. DBA TEN PHARMACY, JACQUELINE DUVAL VU **750 Long Beach Boulevard, Suite 1** **Long Beach, CA 90813** **Permit No. PHY 53619,** **and** **JACQUELINE DUVAL VU** **960 N. Tustin Street, Suite 388** **Orange, CA 92867** **Pharmacist No. RPH 56257,** **and** **LUKE DUVAL VU** **960 N. Tustin Street, Suite 388** **Orange, CA 92867** **Pharmacist No. RPH 54277,** **and**	OAH No. 2020060475 **STIPULATED SURRENDER OF LICENSE AND ORDER AS TO DRUG DEPOT PHARMACY INC., PHARMACY PERMIT NO. PHY 50418**

DRUG DEPOT PHARMACY INC.
999 N. Tustin Avenue, Suite 12
Santa Ana, CA 92705

Permit No. PHY 50418,

Respondents.

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

PARTIES

1. 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 Rob Bonta, Attorney General of the State of California, by Michael Yi and Kevin Rigley, Deputy Attorneys General.

2. Drug Depot Pharmacy Inc. (Respondent) is represented in this proceeding by attorney Ivan Petrzelka, whose mailing address is: P.O. Box 552, Red Bluff, CA 96080.

3. On November 10, 2010, the Board issued Permit Number PHY 50418 to Drug Depot Pharmacy Inc. Luke Duval Vu is and has been the 100% shareholder, President and Secretary of Respondent since October 6, 2012. Luke Duval Vu was the PIC of Respondent from November 6, 2012 to December 6, 2020. Permit Number PHY 50418 was in full force and effect at all times relevant to the charges brought in Second Amended Accusation Number 6796, and will expire on November 1, 2021, unless renewed.

JURISDICTION

4. Second Amended Accusation Number 6796 was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on May 10, 2021. Respondent timely filed its Notice of Defense contesting the Second Amended Accusation. A copy of Second Amended Accusation Number 6796 is attached as Exhibit A and incorporated by reference.

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ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation Number 6796. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

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 Second Amended Accusation; the right to confront and cross-examine the witnesses against it; 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 Second Amended Accusation Number 6796, if proven at a hearing, constitute cause for imposing discipline upon its Permit License.

9. For the purpose of resolving Second Amended Accusation Number 6796 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 Respondent hereby gives up its right to contest those charges.

10. Respondent understands that by signing this stipulation, it enables the Board to issue an order accepting the surrender of its Permit License without further process.

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CONTINGENCY

11. 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.

12. 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.

13. 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.

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 Order:

ORDER

IT IS HEREBY ORDERED that Permit Number PHY 50418 issued to Drug Depot Pharmacy Inc. is surrendered and accepted by the Board. The surrender of Respondent's Pharmacy Permit shall be stayed for one hundred and twenty (120) days from the effective date of this Decision and Order, by which time Respondent shall be sold or closed.

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1. The surrender of Respondent's Pharmacy Permit and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Second Amended Accusation Number 6796 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Second Amended Accusation Number 6796 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6. Respondent Drug Depot Pharmacy Inc. and Respondent Ten Pharmacy Inc. dba Ten Pharmacy, Jacqueline Duval Vu, shall pay the Board, jointly and severally, its costs of investigation and enforcement in the amount of $35,000.00 prior to issuance of a new or reinstated license.

7. In the event that Respondent is not sold by the stayed effective date of the Decision, Respondent shall, within ten (10) days of the stayed effective date of the Board's Decision and Order, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board of all controlled substances and dangerous drugs and devices. Respondent shall further

provide written proof of such disposition and submit a completed Discontinuance of Business form according to Board guidelines.

Respondent's owner(s) shall also, by the stayed effective date of this Decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent's owner(s) shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

8. During the stay period, Respondent's PIC or a hired consultant shall review pharmacy operations twice a month and provide reports to the Board.

9. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order, and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Permit License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

_____
LUKE DUVAL VU – PRESIDENT AND SECRETARY, DRUG DEPOT PHARMACY INC.
Respondent

provide written proof of such disposition and submit a completed Discontinuance of Business form according to Board guidelines.

Respondent's owner(s) shall also, by the stayed effective date of this Decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent's owner(s) shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

8. During the stay period, Respondent's PIC or a hired consultant shall review pharmacy operations twice a month and provide reports to the Board.

9. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order, and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Permit License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/1/24

LUKE DUVAL VU – PRESIDENT AND SECRETARY, DRUG DEPOT PHARMACY INC.
Respondent

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

DATED: _____

IVAN PETRZELKA
Attorney for Respondents

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: November ____, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General
KEVIN RIGLEY
Supervising Deputy Attorney General

MICHAEL YI
Deputy Attorney General
Attorneys for Complainant

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

DATED: November 1, 2021

IVAN PETRZELKA
Attorney for Respondents

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: November 1, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General
KEVIN RIGLEY
Supervising Deputy Attorney General

MICHAEL YI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation Number 6796

MATTHEW RODRIQUEZ
Acting Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General
DIANN SOKOLOFF
Supervising Deputy Attorney General
KEVIN RIGLEY
Deputy Attorney General
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E-mail: Michael.Yi@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against**:**	Case No. 6796
TEN PHARMACY INC. DBA TEN PHARMACY, JACQUELINE DUVAL VU **750 Long Beach Boulevard, Suite 1** **Long Beach, CA 90813** **Permit No. PHY 53619,** **and** **JACQUELINE DUVAL VU** **960 N. Tustin Street, Suite 388** **Orange, CA 92867** **Pharmacist No. RPH 56257,** **and** **LUKE DUVAL VU** **960 N. Tustin Street, Suite 388** **Orange, CA 92867** **Pharmacist No. RPH 54277,** **and**	OAH No. 2020060475 **SECOND AMENDED ACCUSATION**

DRUG DEPOT PHARMACY INC.
999 N. Tustin Avenue, Suite 12
Santa Ana, CA 92705

Permit No. PHY 50418,

Respondents.

PARTIES

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

2. On October 30, 2015, the Board issued Permit Number PHY 53619 to Ten Pharmacy Inc. dba Ten Pharmacy, Jacqueline Duval Vu ("Respondent Ten Pharmacy" or "the pharmacy"). Jacqueline Duval Vu is and has been the Chief Executive Officer, President, 100% shareholder, Secretary, Treasurer/Chief Financial Officer and Director of Respondent Ten Pharmacy since October 30, 2015. The Permit was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and expired on October 1, 2020.

3. On October 1, 2004, the Board issued Pharmacist Number RPH 56257 to Jacqueline Duval Vu ("Respondent Jacqueline Vu"). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on December 31, 2021, unless renewed. Respondent Jacqueline Vu is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since October 30, 2015.

4. On March 26, 2003, the Board issued Pharmacist Number RPH 54277 to Luke Duval Vu ("Respondent Luke Vu"). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on October 31, 2022, unless renewed.

5. On November 10, 2010, the Board issued Permit Number PHY 50418 to Drug Depot Pharmacy Inc. ("Respondent Drug Depot"). Luke Duval Vu is and has been the 100% shareholder, President and Secretary of Respondent Drug Depot since October 6, 2012. Luke Duval Vu is and has been the Pharmacist-in-Charge of Respondent Drug Depot since November

6, 2012. The Permit was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on November 1, 2021, unless renewed.

JURISDICTION

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

7. Section 4300 provides that every license issued by the Board is subject to discipline, including suspension or revocation.

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

9. Section 4302 states:

> The board may deny, suspend, or revoke any license where conditions exist in relation to any person holding 10 percent or more of the ownership interest or where conditions exist in relation to any officer, director or other person with management or control of the license that would constitute grounds for disciplinary action against a licensee.

STATUTORY PROVISIONS

10. Section 4036.5 states: "'Pharmacist-in-charge' means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

11. Section 4081, subdivision (a)**,** states:

> 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 . . . holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

12. Section 4101, subdivision (a), states: "A pharmacist may take charge of and act as the pharmacist-in-charge of a pharmacy upon application by the pharmacy and approval by the board. A pharmacist-in-charge who ceases to act as the pharmacist-in-charge of the pharmacy shall notify the board in writing within 30 days of the date of that change in status."

13. Section 4105 states:

> (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.
>
> (b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.
>
> (c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.
>
> (d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

14. Section 4113 states that:

> (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.
>
> (b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy..
>
> (c) The 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.
>
> (d) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board..
>
> (e) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30 days a permanent replacement pharmacist-in-charge to propose to the board on the notification form, the pharmacy may instead provide on that form the name of any pharmacist who is an employee, officer, or administrator of the pharmacy or the entity that owns the pharmacy and who is actively involved in the management of the

pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity that owns the pharmacy, shall be prepared during normal business hours to provide a representative of the board with the name of the interim pharmacist-in-charge with documentation of the active involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

15. Section 4301 states, in pertinent part, that:

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

. . . .

(d) The clearly excessive furnishing of controlled substances in violation of Section 11153 of the Health and Safety Code.

. . . .

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

. . . .

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

. . . .

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

16. Section 4305 states:

(a) Failure by any pharmacist to notify the board in writing that he or she has ceased to act as the pharmacist-in-charge of a pharmacy, or by any pharmacy to notify the board in writing that a pharmacist-in-charge is no longer acting in that capacity, within the 30-day period specified in Sections 4101 and 4113 shall constitute grounds for disciplinary action..

(b) Operation of a pharmacy for more than 30 days without supervision or management by a pharmacist-in-charge shall constitute grounds for disciplinary action.

(c) Any person who has obtained a license to conduct a pharmacy, who willfully fails to timely notify the board that the pharmacist-in-charge of the pharmacy has ceased to act in that capacity, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist subject to the supervision and management of a responsible pharmacist-in-charge, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy..

17. Section 4306.5 states:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

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

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

18. Section 4307 provides as follows:

(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 manger, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge 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, or partner, or in any 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 and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

. . . .

19. Section 4332 states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

CALIFORNIA REGULATIONS

20. California Code of Regulations, title 16, section 1709, subdivision (a), states:

Each permit to operate a pharmacy shall show the name and address of the pharmacy, the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each pharmacy shall, in its initial application on the annual renewal form, report the name of the pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall be reported to the Board within 30 days.

21. California Code of Regulations, title 16, section 1709.1, states, in pertinent part:

(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

(b) The pharmacy owner shall vest the pharmacist-in-charge with adequate authority to assure compliance with the laws governing the operation of a pharmacy.

. . . .

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 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.

23. California Code of Regulations, title 16, section 1735.8, states:

(a) Any pharmacy engaged in compounding shall maintain, as part of its written policies and procedures, a written quality assurance plan designed to monitor and ensure the integrity, potency, quality, and labeled strength of compounded drug preparations.

(b) The quality assurance plan shall include written procedures for verification, monitoring, and review of the adequacy of the compounding processes and shall also include written documentation of review of those processes by qualified pharmacy personnel.

(c) The quality assurance plan shall include written standards for qualitative and quantitative analysis of compounded drug preparations to ensure integrity, potency, quality, and labeled strength, including the frequency of testing. All qualitative and quantitative analysis reports for compounded drug preparations shall be retained by the pharmacy and maintained along with the compounding log and master formula document. The quality assurance plan shall include a schedule for routine testing and analysis of specified compounded drug preparations to ensure integrity, potency, quality, and labeled strength, on at least an annual basis.

(d) The quality assurance plan shall include a written procedure for scheduled action in the event any compounded drug preparation is ever discovered to be outside minimum standards for integrity, potency, quality, or labeled strength.

(e) The quality assurance plan shall include a written procedure for responding to out-of-range temperature variations within the pharmacy and within patient care areas of a hospital where furnished drug is returned for redispensing.

CODE OF FEDERAL REGULATIONS

24. Code of Federal Regulations, title 21, section 1304.03 states, in pertinent part:

. . . .

(b) A registered individual practitioner is required to keep records, as described in 1304.04, of controlled substances in Schedules II, III, IV, and V which are dispensed, other than by prescribing or administering in the lawful course of professional practice.

25. Code of Federal Regulations, title 21, section 1304.04 states, in pertinent part:

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, every inventory and other records required to be kept under this part must be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.

26. Code of Federal Regulations, title 21, section 1304.11 states:

(a) General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the

possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

(b) Initial inventory date. Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this section as applicable. In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.

(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

. . . .

(e) Inventories of manufacturers, distributors, registrants that reverse distribute, importers, exporters, chemical analysts, dispensers, researchers, and collectors. Each person registered or authorized (by 1301.13, 1307.11, 1307.13, or part 1317 of this chapter) to manufacture, distribute, reverse distribute, dispense, import, export, conduct research or chemical analysis with controlled substances, or collect controlled substances from ultimate users, and required to keep records pursuant to 1304.03 shall include in the inventory the information listed below.

. . . .

(4) *Inventories of importers and exporters.* Each person registered or authorized to import or export controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section. Each such person who is also registered as a manufacturer or as a distributor shall include in his/her inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

27. Code of Federal Regulations, title 21, section 1364.03 states:

(a) A prescription for a controlled substance may be issued only by an individual practitioner who is:

(1) authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession and

(2) either registered or exempted from registration pursuant to Secs. 1301.22(c) and 1301.23 of this chapter.

(b) A prescription issued by an individual practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner.

COST RECOVERY

28. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

DANGEROUS DRUGS

29. Section 4022 states:

> "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
>
> (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
>
> (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
>
> (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

30. Lidocaine ointment, also known by its brand name of Xylocaine, is a dangerous drug under section 4022. Lidocaine ointment is used as a local anesthetic.

31. Diclofenac topical gel, also known by its brand name of Voltaren, is a dangerous drug under section 4022. Diclofenac topical gel is used as an anti-inflammatory.

32. Naproxen is a dangerous drug under section 4022, and used for pain relief.

33. Chlorzoxazone tablets, also known by its brand name of Paraflex, is a dangerous drug under section 4022. Chlorzoxazone is used as a muscle relaxant.

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2018 BOARD INSPECTION

34. On November 28, 2017, the Board received a complaint from J. Z. of National Pharmaceutical Services (NPS), a Pharmacy Benefit Manager.[1] J. Z. alleged that NPS, on behalf of Medicare Part D Plan CareMore Health, conducted an audit on Respondent Ten Pharmacy that resulted in claims reversal for insufficient evidence of timely copayment collection by the pharmacy. The complaint also stated that: "The [NPS] member received 10 tubes of 35.4 grams of Lidocaine 5% ointment she did not authorize be filled. Upon reversal notification two pharmacy employees showed up to the members home, requesting she sign a document attesting to receiving the medication and threatening to turn her into collections. The pharmacy then called the member and told her she would be responsible for the full plan paid total of $878.25, not just her copay of $9.50. And if she didn't pay she would be turned into collections."

35. On January 23, 2018, a Board Inspector ("the Board Inspector") received records from NPS related to an investigation concerning Respondent Ten Pharmacy, and NPS's audit from January 27, 2017 to July 5, 2017, which indicated that:

- Respondent Ten Pharmacy was initially identified by CareMore as submitting claims for Lidocaine 5% ointment.
- All of the claims in question consisted of Lidocaine ointment 5%, Diclofenac gel 1% and Diclofenac gel 3%.
- NPS interviewed patients who indicated that the pharmacy waived copayments and mailed refills of the medication to patients without their approval, or at their request. The pharmacy then provided records documenting that copays were collected. However, NPS concluded there was insufficient evidence to prove that the pharmacy had collected copayments in a timely manner. As a result of the originally audited 38 claims, 27 claims were administratively reversed because the members stated they were never asked to pay

[1] Pharmacy Benefit Managers (PBM) are third-party administrators of prescription drug programs such as commercial health plans, employer or employees plans and Medicare Part D plans. PBM are primarily responsible for developing and maintaining the formulary, contracting with pharmacies, negotiating discounts and rebates with drug manufacturers, and processing and paying prescription drug claims.

copayments - nor did they pay any copayments. An additional five claims processed after the audit would be administratively reversed based on the members' statements the pharmacy never requested or collected a copayment.

d. The total amount to be reversed was $9,126.12.

36. The following summarizes the documentation reviewed and interviews with patients/members. The amount of the copayment for the medication varied.

- F. B. had prescriptions filled for Lidocaine ointment 5% on 05/26/2017, 06/26/2017 and 07/28/2017. She indicated she received three shipments, without her approval or request to fill. She did not pay a copayment or receive a bill. The claims for these medications were reversed.
- H. N. had prescriptions filled for Diclofenac gel 1% on 05/09/2017 and 06/05/2017 and for Lidocaine ointment 5% on the same dates. H. N. stated he paid around $60 one time, and told the pharmacy to stop sending the medications. He never received a second shipment on 06/05/2017 and never paid a second copayment. One claim for the Diclofenac gel and one claim for the Lidocaine ointment 5% was reversed.
- L. O. had prescriptions filled for Diclofenac gel 1% on 05/05/2017, 06/29/2017 and 08/23/2017. She received knee injections from Dr. N. and has not paid any copayments. She has not received a bill from the pharmacy. She paid Dr. N. around $60. The claims for these medications were reversed.
- D. N. had prescriptions filled for Lidocaine ointment 5% on 05/02/2017 and 06/26/2017 and for Diclofenac gel 3% on the same dates. D. N. stated she didn't request or approve any refills, has never paid a copayment or received a bill. The medication is not helping, she has too much of it, and they can stop sending it. The claims for these medications were reversed.
- C. C. had a prescription filled for Diclofenac gel 1% on 05/01/2017, and stated she has never paid a copayment or received a bill. The claim for this medication was reversed.

- A. P. had a prescription filled for Diclofenac gel 1% on 05/17/2017, and did not pay the copayment. The medication isn't working too well. The claim for this medication was not reversed.
- C. J. had four prescriptions filled for Diclofenac gel 1% on 05/09/2017, 06/05/2017, 07/05/2017, and 08/18/2017 and four prescriptions for Lidocaine ointment 5% on the same dates. C. J. stated the medications came automatically without her request or approval, and she never paid a copayment or received a bill. The claims for these medications were reversed.
- M. P. had one prescription filled for Diclofenac gel 1% on 02/10/2017, and did pay the copayment. The claim for this medication was not reversed.
- C. G. had seven prescriptions filled for Lidocaine ointment 5% on 01/27/2017, 03/13/2017, 04/10/2017, 05/09/2017, 06/09/2017, 07/27/2017 and 08/18/2017. She indicated that she did not request or approve the medications, but the pharmacy is just sending them. She never paid any copayment and has never received a bill. She has sufficient quantity and doesn't need them to keep sending it. The claims for these medications were all reversed.
- L. C. had four prescriptions filled for Diclofenac gel 1% on 03/28/2017, 04/18/2017, 05/16/2017 and 07/03/2017 and four prescriptions filled for Lidocaine ointment 5% on 03/21/2017, 04/18/2017, 05/16/2017 and 07/03/2017. The pharmacy called each month for approval to refill the medications. She never asked to pay any copayment and when she asked about the cost, she was told she did not have to pay anything out-of-pocket. The claims for four out of eight of the prescriptions were reversed.
- F. A. had one prescription filled for Diclofenac gel 1% on 03/02/2017. She had been receiving the medication from Walgreen's, but Dr. G. sent the prescription to the pharmacy because they deliver. She did not like that, and went to the Intervalley office to ask them not to deliver the medication to her house. She paid the copayment. The claim for this medication was reversed.

- M. B. received three prescriptions for Lidocaine ointment 5% on 02/02/2017, 03/16/2017 and 04/24/2017. M. B. could not be reached for an interview.

37. NPS' audit for the period of time between January 27, 2017 and August 31, 2017 indicated that Respondent Ten Pharmacy submitted 37 "unreversed" claims for eight CareMore members between January 1, 2017 and August 31, 2017. Based on the customer statements, with the majority of members attesting to never being asked to pay a copayment and receiving mail order shipments without their approval or at their request, 18 claims for Lidocaine would be reversed.

38. The following summarizes the documentation reviewed and patient/member interviews for Lidocaine 5% ointment claims which were audited:

Z. W. had a prescription filled for Lidocaine ointment 5% on 03/08/2017. Z. W. did not authorize the pharmacy to transfer her prescription from Drug Depot, and did not authorize the pharmacy to ship the medication to her. She refused the second shipment in July and she was never asked to pay a copayment, nor did she. The claim for this medication was reversed.

- D. A. had three prescriptions filled for Lidocaine ointment on 06/12/2017, 07/11/2017 and 08/18/2017. The claims were reversed.
- E. N. had four prescriptions filled for Lidocaine ointment on 04/28/2017, 05/22/2017, 06/26/2017, and 07/27/2017. Patient stated she told Dr. K. N. she did not have pain and left when he tried to give her an injection in her knee. She never requested that the pharmacy to send her the medication, and she never paid a copayment. When she asked the pharmacy to stop sending the medication to her, she was told the medication was on automatic refill. The claims were reversed.
- R. L. had two prescriptions filled for Lidocaine ointment on 07/18/2017 and 08/18/2017. Customer statement is not evidence pharmacy collected copayments. The claims were reversed.

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- M. Z. had four prescriptions filled for Lidocaine ointment on 05/12/2017, 06/09/2017, 07/11/2017 and 08/18/2017. Patient stated she has never paid a copy or been asked to pay a copayment. The shipment comes automatically without her approval and she has a surplus. The claims were all reversed.
- A. R. had two prescriptions filled for Lidocaine ointment 5% on 07/19/2017 and 08/18/2017. Patient stated he has no applicable copayments. The claims were not reversed.
- C. F. had four prescriptions filled for Lidocaine ointment 5% on 01/31/2017, 03/10/2017, 04/10/2017 and 05/09/2017. The claims were reversed.

39. On November 3, 2017, NPS sent a notice of termination to Respondent Ten Pharmacy, and the pharmacy appealed NPS's decision. As a result of their findings, NPS sent a complaint regarding Respondent Ten Pharmacy to the National Benefit Integrity MEDIC.

40. On February 20, 2018, the Board Inspector received a statement from J. Z. B., setting forth the facts underlying a complaint by a Medicare Part D Member, D. A., who attested to never being charged a copayment or paying a copayment. The pharmacy was audited by NPS following questionable claims activity for high dollar topical medications known to be used in fraud schemes.

41. On February 15, 2018, the Board Inspector inspected Respondent Ten Pharmacy. Details of the inspection included, but are not limited to, the following:

- Respondent Ten Pharmacy is an independent pharmacy, which dispenses approximately 80 prescriptions per day and is typically staffed with two pharmacists, three technicians processing and billing prescriptions, one clerk, and one delivery driver.
- The pharmacy delivered to patients' residences and not to physicians' offices.
- The pharmacy compounded for certain prescriptions such as hormones, pain creams and capsules.
- The pharmacy had not conducted any Drug Enforcement Administration (DEA) inventory; however, the pharmacy had a perpetual inventory.

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42. The Board Inspector interviewed the pharmacy's staff, including but not limited to Respondent Luke Vu, who stated that:

- 30% of the prescriptions were delivered to patients (Golden State Overnight/GSO or delivery staff). The pharmacy used to use GSO and recently they began using a delivery staff.
- "All patients were contacted prior to their delivery".
- 5%-30% of the prescriptions were on auto-refill.
- The top two most dispensed medications were Lidocaine ointment and Diclofenac gel.
- All prescriptions delivered required a signature, including for refills.
- The pharmacy did not have any contracts with the physicians, and the pharmacy received prescriptions by marketing to physicians and providing physicians with preprinted prescription forms.
- The pharmacy received prescriptions from physicians' offices directly via facsimile, orally or electronically. On most occasions physicians' offices provided the patients' information (patients address, phone and insurance) to the pharmacy.
- Once the prescription was received from the physician, the pharmacy processed the prescription and contacted the patients prior to dispensing.
- Patient copayments were collected at the time of delivery/dispensing. If the copayment was not collected at the time of dispensing, the patient was added to the pharmacy's "copay collection" spreadsheet for copayment collection follow up. If the copayment collection was not collected after contacting the patients three times, the copayment was waived. This happened around 3% of the time.
- Copayments were not waived unless patient met the criteria for "financial hardship".
- All pharmacy billing was in house and not outsourced.

43. The Board Inspector requested from the pharmacy, and received documents related to its dispensing history, its inventory, the "Copy collection" spreadsheet, copayment waiver application for financial hardship, some of the prescription hard copies, a DEA biennial inventory dated February 16, 2018, its policy about collection and waiver of prescription share cost, among

other documents. According to document(s) produced, the pharmacy's policy is to contact each patient prior to dispensing medications, except for in limited circumstances when the patient did not timely respond.

44. The Board Inspector also interviewed and/or obtained information directly from more than 10 patients, related to the allegations in the complaint against the pharmacy. Based on evidence provided by NPS and during the Board's investigation, Respondent Ten Pharmacy dispensed prescriptions to patients without their approval and waived patients' copayments in order to encourage the patient to receive unwanted prescriptions. After an investigation began concerning the pharmacy's billing scheme and its failure to collect copayments for the medications, the pharmacy started requesting that patients pay their copayments which had previously been waived. Most of the patients did not sign up for automatic refill of their medications with the pharmacy, and received a large volume of them automatically. A. R. indicated the pharmacy sent her several boxes of medication. P. M. received an immense amount of the medication from the pharmacy and contacted them twice to stop the deliveries. M. P. contacted the pharmacy on several occasions to ask them to stop delivering the medications, but they continued to dispense them. The pharmacy dispensed higher quantities of medication and/or more frequently than needed and knowingly dispensed prescriptions without receiving approval and without disclosing the copayment requirements to patients until after dispensing the prescriptions, as follows:

Patient Initials	**Prescription number/ date (sold or ready date)**
P. M.	#6100538
	5/19/2017
	8/24/2017
	6/9/2017
	3/10/2017
	2/13/2017
	4/24/2017
P. M.	#6100539
	5/19/2017
	7/28/2017
	6/9/2017

	3/10/2017
	2/13/2017
	4/24/2017
D. A.	#6101509
	06/12/2017
	07/13/2017
	08/18/2017
E. L.	#6100481
	7/11/2017
	2/6/2017
	6/6/2017
	3/13/2017
	8/17/2017
	4/6/2017
	5/5/2017
E. L.	#6102806
	9/8/2017
A. R.	#6101243
	5/8/2017
	7/11/2017
	6/9/2017
A. R.	#6101248
	7/11/2017
	5/8/2017
	6/9/2017

45. The Board Inspector received records of purchases, credits and dispositions from Respondent Ten Pharmacy's wholesalers for the Lidocaine ointment 5% and Diclofenac 1% and 3%, between 10/30/2015 and 02/15/2018, in addition to other documents, and performed an audit for this time period. The audit showed significant negative and positive variances. A positive variance indicates a shortage (purchases/acquisitions greater than sales/disposition). A negative variance indicates an overage (sold more than purchased). The results of the audit are summarized in the following table:

Table -: Board's Audit for the period of 10/30/2015 (opening date) -02/15/2018 (inspection date)

Medication	Units	Beginning Inventory-10/30/2015	Acq WLS: Capital	Acq WLS: Cardinal health	Acq WLS: Harvard (subsidiary of Cardinal)	Acq WLS:Redmond and Greer	Acq PHY:Valley	Acq WLS:HD	Acq WLS:Masters	ACQ TOTAL	<Disposition>	<Destruction>	<Ending Inventory> 02/15/2018	DISPO TOTAL	Variance
Lidocaine 5% ointment (each tube is 35.44 grams)	grams	1,134	218,680	15,060	42,528	105,792	1,770	-	141,760	**526,724**	470,537	-	19,953	**490,489**	**36,235**
Diclofenac 3% gel (each tube is 100 grams)	grams	3,100	28,000	-	4,000	44,000	-	-	4,000	**83,100**	84,200	-	9,800	**94,000**	**-10,900**
Diclofenac 1% gel (each tube is 100 grams)	grams	1,500	-	14,385	-	191,800	5,000	1,000	-	**213,685**	157,800	-	15,900	**173,700**	**39,985**

FIRST CAUSE FOR DISCIPLINE

(Respondent Ten Pharmacy and Respondent Jacqueline Vu Failure to Conduct Controlled Substances Inventory)

46. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4081, subdivision (a), 4113, subdivision (c), 4300, 4301 subdivisions (j) and (o), and 4302, 4332, in conjunction with California Code of Regulations, title 16, section 1718, and Code of Federal Regulations, title 21, sections 1304.03, subdivision (b), 1304.4, subdivision (a), 1304.11, subdivisions (a)-(c) and (e)(4), and 1364.03, subdivisions (a) and (b), in that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC for Respondent Ten Pharmacy, failed to: (1) prepare and maintain a complete and accurate record of all of its controlled substances on an inventory date; and (2) conduct a DEA biennial inventory of controlled substances within two years of the previous biennial inventory date. The allegations in paragraphs 34-45 are incorporated here by reference.

SECOND CAUSE FOR DISCIPLINE

(Respondent Ten Pharmacy and Respondent Jacqueline Vu Acts Involving Dishonesty, Fraud, or Deceit)

47. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action for unprofessional conduct under sections 4113, subdivision (c), 4300, 4301, subdivision (f), and 4302, in that Respondent Jacqueline Vu, while acting as the PIC of Respondent Ten Pharmacy, committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption, by billing patients' insurance for prescriptions which the patients did not request or approve the prescriptions and/or for which the patients did not provide their required copayment, until after the prescriptions were dispensed, and then attempting to get patient approval and copayments after the start an investigation related to their billing practices. The allegations in paragraphs 34-45 are incorporated here by reference.

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THIRD CAUSE FOR DISCIPLINE
(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Excessive Furnishing of Controlled Substances)

48. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action for unprofessional conduct under sections 4113, subdivision (c), 4300, 4301, subdivision (d), 4302 and 4036.5, subdivisions (a)-(d), for dispensing clearly excessive quantities of medication and/or more frequently than needed to patients, including to D. A., A. R., E. L. and P. M. The allegations in paragraphs 34-45 are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE
(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Records of Acquisition and Disposition)

49. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under sections 4005, 4113, subdivision (c), 4300, 4301, subdivisions (o) and/or (j), and 4302, in conjunction with section 4036.5, for violating Sections 4081, subdivision (a), 4105, subdivisions (a)-(d), and 4332, in that, while Respondent Jacqueline Vu was acting as PIC of Respondent Ten Pharmacy, she and the pharmacy failed to maintain and/or produce required records to the Board for Respondent Ten Pharmacy, in that an audit for the period of time between 10/30/2015 and 02/15/2018, revealed an overage of Diclofenac 3% gel and shortages of Lidocaine 5% ointment and Diclofenac 1% gel. The allegations in paragraphs 34-45 are incorporated here by reference.

FIRST 2020 BOARD INSPECTION AND

BOARD INVESTIGATION REPORT DATED SEPTEMBER 30, 2020

50. On February 20, 2020, the Board received a complaint from Y. M., a former employee (pharmacy technician) of the pharmacy. Y. M. has alleged that she has personal knowledge that the pharmacy compounded, labeled, billed and dispensed lidocaine-naproxen creams without the naproxen ingredient. Y. M. has further alleged that the pharmacy billed patients' insurance for compounded naproxen-lidocaine cream (NL cream) and naproxen suspension, but only dispensed the NL cream, and received refunds for the unused naproxen. Y. M. also alleged that Respondent Luke Vu: (1) fired any staff who questioned the practice; and

(2) trained staff to bill patients' insurance for unauthorized and excessive medications. Y. M., who began her employment at the pharmacy on or about February 10, 2020, voluntarily resigned from the pharmacy on or about February 21, 2020, because of these fraudulent activities.

51. Y. M. informed the Board Investigator that while she was employed at the pharmacy, Respondent Luke Vu primarily managed the pharmacy and his wife, Respondent Jacqueline Vu, was never present at the pharmacy. Accordingly, Respondent Luke Vu was inappropriately effectively acting as the PIC in place of Respondent Jacqueline Vu at Ten Pharmacy.

52. On July 21, 2020, Respondent Luke Vu informed the Board Inspector that the pharmacy had closed due to looting, and that the medication compounding records were destroyed from water and fire damage. Respondent Luke Vu also related that the pharmacy had not sent any of their compounded preparation to be tested for qualitative and quantitative analysis.

53. On August 5, 2020, Respondent Jacqueline Vu informed the Board Inspector that she could not provide the following records because they were destroyed: (1) the pharmacy's latest self-assessment; (2) compounding records for NL cream and naproxen suspension; and (3) the pharmacy's compounding policy and procedure. Respondent Jacqueline Vu did provide the names of the ingredient wholesalers and dispensing report for all prescriptions between July 21, 2019 and May 29, 2020. Respondent Jacqueline Vu also related that the pharmacy was filling approximately 50 prescriptions per day prior to its destruction. Respondent Jacqueline Vu explained that the pharmacy engaged in very limited compounding activities and no end product tests were conducted on compounded preparations.

54. Based on the Drug Utilization Report[2] for Respondent Ten Pharmacy provided by McKesson (DUR1) from July 21, 2019, through May 29, 2020, the Board Inspector determined that the pharmacy compounded and dispensed 2,467 prescriptions without conducting qualitative and quantitative analysis of the compounded drug preparations.

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[2] Computer generated report of the pharmacy's dispensing records. The reports contains the date the prescription was dispensed, prescription number, drug name, drug strength, quantity dispensed and other information.

55. On September 9, 2020, the Board Inspector gave written notice to Ten Pharmacy, Respondent Jacqueline Vu and Respondent Luke Vu of the compounding violations. On September 14, 2020, Respondent Jacqueline Vu notified McKesson that the DUR1 was inaccurate and contained duplicates of the same prescriptions. On September 15, 2020, McKesson provided another Drug Utilization Report (DUR2) to the Board Inspector.

56. Based on the DUR2, the Board Inspector determined that the pharmacy compounded and dispensed 521 prescriptions without conducting qualitative and quantitative analysis of the compounded drug preparations.

57. On September 22, 2020, Respondent Jacqueline Vu provided the pharmacy's dispensing records (DUR3). The DUR3 indicated that the pharmacy compounded 520 prescriptions from July 21, 2019, through May 29, 2020. Respondent Jacqueline Vu also responded that: (1) the compounding processes employed by the pharmacy may have been somewhat deficient with respect to routine testing of compounded drug preparations; (2) she will not resume compounding after the pharmacy resumes operation; (3) Respondent Luke Vu dispensed compounded prescriptions without conducting routine testing; and (4) she accepted full responsibility for the compounding violations.

58. Based on the variances in the Drug Utilization Reports provided by McKesson and the pharmacy, the Board Inspector requested an accurate dispensing history from May 1, 2018, through May 29, 2020. Based on the dispensing history provided by Respondent Jacqueline Vu (DUR4), the Board Inspector determined that the pharmacy compounded and dispensed 936 prescriptions without conducting qualitative and quantitative analysis of the compounded drug preparations. On September 29, 2020, the Board Inspector gave written notice to Ten Pharmacy, Respondent Jacqueline Vu and Respondent Luke Vu of the compounding violations. Thereafter, the Board Inspector prepared and submitted an Investigation Report dated September 30, 2020 regarding her findings in connection therewith.

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FIFTH CAUSE FOR DISCIPLINE

(Respondent Ten Pharmacy and Respondent Jacqueline Vu Failure to Assure Compounding Quality)

59. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4113, subdivision (c), 4300, 4301 subdivision (o), and 4302, in conjunction with California Code of Regulations, title 16, section 1735.8, subdivisions (a)-(e), in that, during the course of an investigation by the Board, it was determined that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC for Ten Pharmacy, allowed Respondent Luke Vu to act as PIC, and dispensed 936 compounded prescriptions and failed to conduct routine testing on their compound preparations to ensure integrity, potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here by reference.

SIXTH CAUSE FOR DISCIPLINE

(Respondent Ten Pharmacy and Respondent Jacqueline Vu Unprofessional Conduct – Respondent Luke Vu Acting as Ten Pharmacy's PIC Without Registration)

60. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4301, subdivisions (f), (j) and (o), and 4305, in conjunction with California Code of Regulations, title 16, sections 1709 and 1709.1, in that during the course of two investigations by the Board, it was determined that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating the pharmacy without being registered as the PIC with the Board. While inappropriately effecting acting as Ten Pharmacy's PIC, Respondent Luke Vu dispensed and/or oversaw the dispensing of compounded prescriptions without conducting routine testing to ensure integrity, potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here by reference.

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SEVENTH CAUSE FOR DISCIPLINE

(Respondent Luke Vu

Unprofessional Conduct – Acting as Ten Pharmacy's PIC Without Registration)

61. Respondent Luke Vu is subject to disciplinary action under Code sections 4301, subdivisions (f), (j) and (o), in conjunction with California Code of Regulations, title 16, sections 1709 and 1709.1, in that during the course of two investigations by the Board, it was determined that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating the pharmacy without being registered as the PIC with the Board. While inappropriately effectively acting as Ten Pharmacy's PIC, Respondent Luke Vu dispensed and/or oversaw the dispensing of compounded prescriptions without conducting routine testing to ensure integrity, potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here by reference.

SECOND 2020 BOARD INSPECTION AND

BOARD INVESTIGATION REPORT DATED DECEMBER 15, 2020

62. On June 22, 2020, the Board received a complaint from C. K., a former employee (durable medical equipment sales representative) of the pharmacy. C. K. alleged that Respondent Luke Vu terminated her employment after she reported that several of her prescriptions were billed to her insurance by the pharmacy without her approval. C. K. also alleged that Respondent Luke Vu used her past prescriptions and committed billing fraud. C. K. further alleged that she continued to receive unwanted prescriptions from the pharmacy after her termination.

63. The Board Investigator received records related to C. K.'s lawsuit against Respondent Luke Vu, the pharmacy, Respondent Drug Depot and Netco Medical, Inc. The records indicated or alleged that: (1) Respondent Luke Vu employed C. K. from 2017 to April 13, 2020; (2) in or about 2019, C. K. discovered that Respondent Luke Vu altered her past prescriptions to make false insurance claims; (3) Respondent Luke Vu had been committing durable medical equipment and insurance fraud since September 2019; and (4) Respondent Luke Vu terminated C. K. after she complained about the illegal activities.

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64. On August 4, 2020, the Board Investigator discussed the allegations with C. K., who explained that: (1) in or about April 2020, Respondent Ten Pharmacy provided health insurance to C. K. and other employees; (2) the pharmacy started billing and dispensing unwanted prescriptions, including lidocaine, and durable medical equipment; (3) PIC Jacqueline Vu was never present at the pharmacy; (4) Respondent Luke Vu managed and operated the pharmacy; (5) C. K. was terminated from her employment after she confronted Respondent Luke Vu about the unlawful activities; and (6) Respondent Luke Vu reversed the majority of insurance claims and attempted to pay C. K. to not complain to the Board or insurance about the activities.

65. C. K. forwarded the following emails from Respondent Luke Vu to the Board Investigator: (1) email dated March 1, 2020, which stated: "Orals pain have better coverage than topical pain! Stop pushing topical pains! Let MD know if they write pain creams not likely to get covered...if oral drug is covered we can convert to topical," and (2) email dated March 6, 2020, which provided a prescription template for high profit margin prescriptions for medications such as lidocaine 2% gel, doxepin 5% cream, diclofenac sodium 3% gel, DermacinRx ZRM (Lidocaine 5%+Dimethicone 5%), DermacinRx Lexitral PharmaPak (Diclofenac 1.5%+Capsaicin 0.025%) and others. On August 14, 2020, C. K. emailed photographs of three of her prescriptions processed and dispensed by Respondent Drug Depot for lidocaine 5% ointment, dated March 12, 2018, Chlorzoxazone 250 mg, dated March 6, 2019, and Calcipotriene cream 0.005%.

66. Based on the Drug Utilization Report for Respondent Ten Pharmacy from July 21, 2019, through July 21, 2020 (discussed in Board investigation CI 2019 87399), the Board Inspector determined that the following prescriptions were dispensed to C. K. under the prescribing authority of Dr. Jeffrey Pearson (Table 1):

Ready Date	**Written**	**Rx #**	**Product Name**	**Strength**	**Dispensed Quantity**	**C. K.'s Response**
10/17/2019	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
10/23/2019	8/5/2019	6121165	Chlorzoxazone Tabs	250 mg	180	Not prescribed

1/13/2020	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
2/17/2020	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
3/26/2020	3/24/2020	6122766	Clotrimazole-Betamethasone cream	1-0.05%	90	Received without authorization
3/26/2020	3/25/2020	6122765	Econazole Nitrate cream	1%	170	Received without authorization
3/26/2020	3/25/2020	6122767	Ketoprofen caps	25 mg	270	Not prescribed
3/26/2020	3/25/2020	6122768	Lidocaine patch	5%	90	Received without authorization

The Board Inspector requested and received a statement from Dr. Pearson stating he did not recall if he had authorized the prescriptions in Table 1 to C. K.

67. The Board Inspector also requested and received Respondent Drug Depot's dispensing history. Based on Respondent Drug Depot's dispensing history, the Board Inspector determined that the following prescriptions (under the prescribing authority of Dr. Pearson) were processed and billed to C. K.'s insurance without her approval (Table 2):

Written	**Dispensed**	**Rx #**	**Product Name and Strength**	**Dispensed Quantity**	**Insurance**	**Insurance Reimburse**
12/13/2017	3/12/2018	6052104	Lidocaine ointment 5%	212.64	Blue Shield of California	$981.06
12/11/2018	3/6/2019	6061551	Chlorzoxazone 250 mg tablets	120	BCBS of California	$2,234.90

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EIGHTH CAUSE FOR DISCIPLINE

(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Unprofessional Conduct – Dispensing Unauthorized Prescriptions)

68. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in that, during the course of an investigation by the Board, it was determined that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC for Respondent Ten Pharmacy, dispensed prescriptions not approved or requested by C. K. The allegations in paragraphs 62-67 are incorporated here by reference.

NINTH CAUSE FOR DISCIPLINE

(Respondent Drug Depot and Respondent Luke Vu
Unprofessional Conduct – Dispensing Unauthorized Prescriptions)

69. Respondent Drug Depot and Respondent Luke Vu are subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in that, during the course of an investigation by the Board, it was determined that Respondent Drug Depot and Respondent Luke Vu, while acting as the PIC for Respondent Drug Depot, dispensed prescriptions not approved or requested by C. K. The allegations in paragraphs 62-67 are incorporated here by reference.

TENTH CAUSE FOR DISCIPLINE

(Respondent Luke Vu
Unprofessional Conduct – Acting as Ten Pharmacy's PIC Without Registration)

70. Respondent Luke Vu is subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in conjunction with Code section 4113, subdivision (c), in that during the course of two investigations by the Board, it was determined that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating the pharmacy without being registered as the PIC with the Board. While inappropriately effectively acting as Ten Pharmacy's PIC, Respondent Luke Vu allowed prescriptions to be dispensed without C. K.'s approval. The allegations in paragraphs 62-67 are incorporated here by reference.

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OTHER MATTERS

71. Pursuant to Section 4307, if discipline is imposed on Pharmacy Permit Number PHY 53619 issued to Respondent Ten Pharmacy while Respondent Jacqueline Vu has been an officer, director, or owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Respondent Ten Pharmacy and Respondent Jacqueline Vu 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 for five years if Pharmacy Permit Number PHY 53619 is placed on probation or until Pharmacy Permit Number PHY 53619 is reinstated if it is revoked.

72. Pursuant to Section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50418 issued to Respondent Drug Depot while Respondent Luke Vu has been an officer, director, or owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Respondent Drug Depot and Respondent Luke Vu 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 for five years if Pharmacy Permit Number PHY 50418 is placed on probation or until Pharmacy Permit Number PHY 50418 is reinstated if it is revoked.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Second Amended Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Permit Number PHY 53619, issued to Ten Pharmacy Inc. dba Ten Pharmacy, Jacqueline Duval Vu;

2. Revoking or suspending Pharmacist Number RPH 56257, issued to Jacqueline Duval Vu;

3. Revoking or suspending Pharmacist Number RPH 54277, issued to Luke Duval Vu;

4. Revoking or suspending Permit Number PHY 50418, issued to Drug Depot Pharmacy Inc.;

5. Prohibiting Ten Pharmacy Inc. dba Ten Pharmacy, Jacqueline Duval Vu, from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY 53619 is placed on probation, or until Permit Number PHY 53619 is reinstated if Permit Number PHY 53619 is revoked;

6. Prohibiting Drug Depot Pharmacy Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY 50418 is placed on probation, or until Permit Number PHY 50418 is reinstated if Permit Number PHY 50418 is revoked;

7. Prohibiting Jacqueline Duval Vu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY 53619 is placed on probation, or until Permit Number PHY 53619 is reinstated if Permit Number PHY 53619 is revoked;

8. Prohibiting Luke Duval Vu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY 50418 is placed on probation, or until Permit Number PHY 50418 is reinstated if Permit Number PHY 50418 is revoked;

9. Ordering Ten Pharmacy Inc. dba Ten Pharmacy, Drug Depot Pharmacy Inc., Jacqueline Duval Vu and Luke Duval Vu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, jointly and severally, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 5/7/2021

Signature on File

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