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

12 In the Matter of the Accusation Against:

Case No. 6825

13 **EXCEL CARE PHARMACY, INC., DBA**
14 **EXCEL CARE PHARMACY, ASLI**
15 **PERAINO**
16 **5272 Francis St.**
17 **Chino, CA 91710**

DEFAULT DECISION AND ORDER AS
TO RESPONDENT EXCEL CARE
PHARMACY, INC., DBA EXCEL CARE
PHARMACY, ONLY

18 **Pharmacy Permit No. PHY 54610,**

19 **and**

[Gov. Code, §11520]

20 **FAUZIA RIASAT KHAN**
21 **16901 Rinaldi Street**
22 **Granada Hills, CA 91344**

23 **Pharmacist License No. RPH 65823**

24 Respondents.

25 **FINDINGS OF FACT**

26 1. On or about July 6, 2020, Complainant Anne Sodergren, in her official capacity as the
27 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
28 No. 6825 against Excel Care Pharmacy, Inc., dba Excel Care Pharmacy, Asli Peraino, Owner

(Respondent or Respondent Excel Care) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 12, 2016, the Board of Pharmacy (Board) issued Pharmacy Permit No. PHY 54610 to Respondent Excel Care. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 6825 and was cancelled on or about November 19, 2019. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about July 14, 2020, Respondent was served by Certified and First Class Mail copies of the Accusation No. 6825, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 5272 Francis St. Chino, CA 91710.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505(c) and/or Business and Professions Code section 124.

5. Government Code section 11506(c) states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense . . . and the notice shall be deemed a specific denial of all parts of the accusation . . . not expressly admitted. Failure to file a notice of defense . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. The Board takes official notice of its records and the fact that Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 6825.

7. California Government Code section 11520(a) states, in pertinent part:

(a) If the respondent either fails to file a notice of defense . . . or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 6825, finds that the charges and allegations in Accusation No. 6825, are separately and severally, found to be true and correct by clear and convincing evidence.

9. The Board finds that the actual costs for Investigation and Enforcement are \$90,409 as of July 7, 2021.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Excel Care has subjected its Pharmacy Permit No. PHY 54610 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Permit based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Acts involving moral turpitude, dishonesty, fraud, deceit and/or corruption. (Business and Professions Code section 4301, subdivisions (f) and (g));

b. Subverting an investigation (Business and Professions Code section 4301, subdivision (q));

c. Failure to retain records of the sale, acquisition, receipt, shipment, or disposition of dangerous drugs (Business and Professions Code section 4301, subdivisions (j) and (o), section 4081, subdivision (a), and section 4105, subdivisions (a) and (d)(1));

d. Failure to retain records of the acquisition or disposition of dangerous drugs for at least three years and failure to provide original prescription documents related to a Board investigation. (Business and Professions Code section 4301, subdivisions (j) and (o), and section 4169, subdivision (a)(5)).

e. Failure to give pharmacist-in-charge adequate authority to operate the pharmacy (Business and Professions Code section 4301, subdivision (o), and California Code of Regulations, title 16, section 1709.1, subdivisions (a) and (b));

f. Permitting access to dangerous drugs and devices ((Business and Professions Code section 4301, subdivisions (j) and (o), and section 4116, subdivision (a));

g. Failure to maintain facilities, space, fixtures and equipment so drugs were safely and properly prepared, maintained, secured, and distributed ((Business and Professions Code section 4301, subdivision (o), and California Code of Regulations, title 16, sections 1714, subdivision (b) and 1718);

h. Failure to ensure that all dangerous drugs and devices were delivered to the licensed premises and signed for and received by a pharmacist (Business and Professions Code section 4301, subdivisions (j) and (o), and section 4059.5, subdivision (a)); and

i. Failure to supervision a pharmacy technician and operating a pharmacy without a pharmacist (Business and Professions Code section 4301, subdivisions (j) and (o), section 4115, subdivision (a), and section 4116, subdivision (a)).

ORDER

IT IS SO ORDERED that Pharmacy Permit No. PHY 54610, issued to Respondent Excel Care Pharmacy, Inc., dba Excel Care Pharmacy, Asli Peraino, Owner, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent Excel Care may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on September 15, 2021.

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1 It is so ORDERED on August 16, 2021.

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3 FOR THE BOARD OF PHARMACY
4 DEPARTMENT OF CONSUMER AFFAIRS

5
6 By 

7 DOJ Matter ID:LA2019505296

8 Attachment:
9 Exhibit A: Accusation

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Seung W. Oh, Pharm D.
Board President

Exhibit A

Accusation

(EXCEL CARE PHARMACY, INC., DBA EXEL CARE PHARMACY, ASLI PERAINO, HOWARD SCHULTZ,
and FAUZIA RIASAT KHAN)

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7 *Attorneys for Complainant*

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11 **STATE OF CALIFORNIA**

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15 **PERAINO, OWNER**
16 **5272 Francis St.**
17 **Chino, CA 91710**

ACCUSATION

18 **Pharmacy Permit No. PHY 54610,**

19 **and**

20 **FAUZIA RIASAT KHAN**
21 **16901 Rinaldi Street**
22 **Granada Hills, CA 91344**

23 **Pharmacist License No. RPH 65823**

24 Respondents.

25 **PARTIES**

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

28 2. On or about September 12, 2016, the Board of Pharmacy (Board) issued Pharmacy
Permit Number PHY 54610 to Excel Care Pharmacy, Inc., dba Excel Care Pharmacy, Asli
Peraino, Owner (Respondent Excel Care). The Pharmacy Permit was in full force and effect at all

times relevant to the charges brought herein and will expire on September 1, 2020, unless renewed.

3. On or about August 17, 2011, the Board issued Pharmacist License Number RPH 65823 to Fauzia Riasat Khan (Respondent Khan). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2020, unless renewed.

JURISDICTION

4. 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.

5. Section 4300 of the Code 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.

...

6. Section 4300.1 of the Code 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.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

8. Section 2422 of the Code states, in pertinent part:

- (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not

limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

...

9. Section 4022 of the Code 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.

10. Section 4059 of the Code states, in pertinent part:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

...

11. Section 4059.5 of the Code states, in pertinent part:

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, or in the case of a reverse distributor a designated representative-reverse distributor, that individual shall sign for and receive the delivery.

...

12. Section 4081 of the Code 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 manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment 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.

...

13. Section 4105 of the Code states, in pertinent part:

(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, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative 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, subdivision (c), states that “[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.”

15. Section 4115 of the Code states, in pertinent part:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

...

16. Section 4116 of the Code states, in pertinent part:

(a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.

...

17. Section 4169 of the Code states, in pertinent part:

(a) A person or entity shall not do any of the following:

...

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

...

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

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:

...

(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.

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

...

(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.

...

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

...

19. Section 4307 of the Code states, in pertinent part:

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

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

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

(b) "Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license" as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

...

REGULATORY PROVISIONS

20. 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.

...

21. California Code of Regulations, title 16, 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 of sufficient size and unobstructed area to accommodate the safe practice of 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.

COST RECOVERY

23. Section 125.3 of the Code provides, in pertinent part, that the 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

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **DEFINITIONS**

5 24. “DermacinRx/Surgical Pharmapak” (generic name—Mupirocin/Chlorhexidine,
6 dimethicone skin repair complex, and silicone tape) is categorized as a dangerous drug pursuant
7 to Code section 4022 and is used for impetigo/nasal infection, skin cleansing, wound, or scar care.

8 25. “Inflammacin” (generic name—Diclofenac/capsaicin) is categorized as a dangerous
9 drug pursuant to Code section 4022 and is used to treat osteoarthritis.

10 26. “Inflammation Reduction Pak” (generic name—Lidocaine/Diclofenac/Prilocaine) is
11 categorized as a dangerous drug pursuant to Code section 4022 and is a Non-Steroidal Anti-
12 Inflammatory Drug (NSAID).

13 27. “Mebolic” is a dietary supplement.

14 28. “Migranow” (generic name—Sumatriptan) is categorized as a dangerous drug
15 pursuant to Code section 4022 and is used to treat migraines.

16 29. “Xelital Kit” (generic name—Diclofenac with capsaicin) is categorized as a
17 dangerous drug pursuant to Code section 4022 and is a NSAID.

18 **FACTUAL ALLEGATIONS**

19 30. At all times relevant to the allegations contained herein, Respondent Khan was the
20 pharmacist-in-charge of Respondent Excel Care and of Kare Foods Inc., dba Studio Pharmacy,
21 Pharmacy Permit No. PHY 51656 (Studio Pharmacy).

22 31. On or about April 12, 2017, the Board received a complaint from counsel for
23 University of California (UC) alleging that Respondent Excel Care, Respondent Khan, and Studio
24 Pharmacy had engaged in a billing fraud scheme. The complaint alleged that the scheme aimed
25 to fraudulently obtain student health insurance information from UC students which was then
26 used to bill fraudulent prescriptions in the students’ names. Most of the medications at issue were
27 expensive prescription-grade pain creams usually prescribed to elderly patients to treat arthritis.
28

1 The students were recruited through means such as Facebook ads that offered cash payments to
2 participate in sham clinical trials.

3 32. The UC complaint further alleged that participants in the scheme had attempted to
4 subvert fraud reduction measures. For instance, on or about April 18, 2017, the UC Student
5 Health Insurance Plan (UCSHIP) identified podiatrist Henry Rich Tseng as having been involved
6 in the fraud and blocked him as a prescriber. On that same day, Respondent Excel Care
7 attempted to fill three prescriptions from Dr. Tseng, but those claims were denied on the UCSHIP
8 electronic system, which indicated that the prescriber had been blocked. After those three claims
9 were denied, Respondent Excel Care on the same day billed over 600 prescriptions purportedly
10 written by Dr. Tseng on April 12, 2017, just days before the block went into effect. The 600
11 prescriptions were for three medications: Inflammation Reduction PA (\$2,800 per prescription),
12 Mebolic (\$1,500 per prescription), and Xelital (\$3,900 per prescription) and resulted in \$1.77
13 million in additional claims paid by UCSHIP.

14 33. On or about June 28, 2017, the Board received a complaint against Respondent Excel
15 Care Pharmacy from OptumRx. The complaint alleged that, on or about April 20, 2017,
16 OptumRx attempted to conduct an unannounced on-site visit at Excel Care Pharmacy, but
17 OptumRx's auditor was denied access to the pharmacy. The OptumRx complaint further alleged
18 that a desktop review showed the pharmacy reversed all claims that had been submitted for
19 payment and had been in a paid status to remove them from adjudication.

20 34. On or about July 11, 2017, Board Inspectors Delune and Bayley visited Respondent
21 Excel Care to conduct an inspection. At approximately 9:00 AM, the inspectors found a sign
22 saying the pharmacist was temporarily not on duty and asking visitors to call the pharmacy.
23 Inspector Bayley called the number listed and received an automated message. Inspector Bayley
24 also left multiple messages for Asli Peraino, 100% stock owner of Respondent Excel Care.

25 35. At approximately 9:45 AM, Inspector Bayley called Respondent Khan. Inspector
26 Bayley asked told Respondent Khan that she needed to inspect Excel Care. Respondent Khan
27 stated that she was planning to be there at 11:00 AM when Respondent Excel Care opened.
28

1 36. At approximately 10:22 AM, Respondent Khan arrived at Studio Pharmacy, where
2 Board Inspectors Brandon Mutrux and Christopher Woo were conducting an inspection.
3 Respondent Khan informed the inspectors that there were Board inspectors at Respondent Excel
4 Care. Inspectors Mutrux and Loo told Respondent Khan they would expedite their inspection of
5 Studio Pharmacy on the condition that Respondent Khan would go to Excel Care to meet with
6 Inspectors Bayley and Delune.

7 37. At approximately 10:26 AM, Inspector Bayley received a call from Anthony Peraino,
8 the husband of Asli Peraino. Mr. Peraino stated that Respondent Excel Care had been closed for
9 two to three weeks because his regular pharmacist, RPH Al-Qazzaz, had left. Mr. Peraino stated
10 that Respondent Khan regularly visited the pharmacy two times per week. The inspectors told
11 Mr. Peraino that Respondent Khan had said she would be at the pharmacy at 11:00 AM. Mr.
12 Peraino stated that he would contact Respondent Khan. He called the inspectors back and stated
13 that Respondent Khan would not be able to come to Excel Care. Mr. Peraino stated that he would
14 be back in town the following day and that the inspectors could visit then.

15 38. Inspectors Delune and Bayley waited until 2:30 PM, but Respondent Khan did not
16 arrive at Respondent Excel Care as she had stated she would. Inspectors Delune and Bayley used
17 evidence tape to place a seal around the front door of the pharmacy and left.

18 39. On or about July 12, 2017, Inspectors Bayley and Delune arrived at Excel Care
19 around 10:54 AM. The evidence tape around the door had been broken. A man (later identified
20 as Mr. Peraino) opened the door and appeared to be upset about the evidence tape. When the
21 inspectors entered the pharmacy, they saw Respondent Khan and a second man there.

22 40. The premises had an over-the-counter area, a counter, and six rooms. One room was
23 an office with a computer on a desk. The room behind the counter was the pharmacy. Mr.
24 Peraino stated that all drugs and records were kept in the pharmacy, to which only the pharmacist
25 had a key. The room behind the pharmacy was a compounding room with a sink and a bathroom.

26 41. Mr. Peraino declined to participate in an interview but stated that he and Respondent
27 Khan would help the inspectors collect records. Inspector Bayley asked Respondent Khan if the
28 electronic computer record was an accurate and complete record of the pharmacy. Respondent

1 Khan stated “yes.” Inspector Bayley also asked Respondent Khan if all prescriptions were
2 scanned, and Respondent Khan said “yes.”

3 42. When Inspector Bayley asked about record keeping procedures, Respondent Khan
4 and Mr. Peraino said the pharmacy generated a refill label when processing refills. The generated
5 refill label was affixed to an original prescription as the refills were processed and dispensed.

6 43. During the inspection, Inspector Bayley asked Respondent Khan who else was
7 present at the pharmacy. Mr. Peraino questioned what Inspector Bayley meant and acted as if the
8 unidentified man had not been present. When specifically asked questioned about the man
9 Inspector Bayley had seen, Mr. Peraino claimed that the man was his brother. The inspectors did
10 not observe any physical resemblance between Mr. Peraino and the unidentified man. Inspector
11 Bayley explained that Respondent Khan should have known who was present at the pharmacy
12 because she was responsible for the security of the pharmacy, Respondent Khan did not answer.
13 Mr. Peraino refused to provide the man’s name, and Respondent Khan failed to do so.

14 44. When asked about pharmacy staff members associated with Excel Care, Respondent
15 Khan and Mr. Peraino stated that Respondent Khan and Mr. Peraino were currently working at
16 the pharmacy. Mr. Peraino stated that RPH Al-Qazzaz had left the pharmacy on June 23, 2017
17 and that the pharmacy had been since closed.

18 45. Inspector Bayley asked Respondent Khan if she had found a temporary pharmacist to
19 work at Studio Pharmacy while Respondent Khan was assisting the inspection of Respondent
20 Excel Care. Respondent Khan stated that Studio Pharmacy was closed for the day.

21 46. During the six (6) hour inspection, Mr. Peraino was hostile, uncooperative, and
22 condescending to the inspectors. For instance, when Inspector Bayley asked about prescriptions
23 on a daily log showing they had been entered and billed on the day of the inspection, Mr. Peraino
24 became angry and accused the inspectors of asking too many questions and harassing him. When
25 the inspectors directed questions to Respondent Khan, Mr. Peraino answered first and did not
26 give Respondent Khan the opportunity to speak. Mr. Peraino did not give straight answers to
27 many of the inspectors’ questions. Mr. Peraino repeatedly interrupted conversations between the
28 two inspectors and between the inspectors and Respondent Khan. Mr. Peraino also frequently

1 commented about matters not pertaining to the inspection. At approximately 4:00 PM, Mr.
2 Peraino suddenly told the inspectors that they must leave by 5:00 PM. Inspector Delune pointed
3 out that Respondent Excel Care's business hours were 11:00 AM to 7:00 PM. Mr. Peraino
4 insisted that the pharmacy would be closing at 5:00 PM. Mr. Peraino continued to comment and
5 interrupt the investigators as they attempted to finish the inspection.

6 47. During the inspection, the inspectors inspected the entire premises, including drawers,
7 wall cabinets, rooms, file, cabinets, and more. The inspectors noticed that Excel Care had a small
8 amount of inventory and asked Respondent Khan to conduct a stock on hand inventory for
9 selected medications. Respondent Khan completed the inventory portion of the form and left
10 blank the following fields: last Rx number, last inventory date, date and time last order delivered,
11 name of wholesalers, date and time of last drug loss, date and time DEA report filed, and date and
12 time police report filed. As the pharmacist-in-charge of Respondent Excel Care, it was odd that
13 Respondent Khan could not complete those sections. Respondent Khan's initials were on the
14 pharmacy's daily log for June 22, 2017, June 27, 2017, and July 11, 2017.

15 48. According to Excel Care's records, Respondent Khan's initials were on 43 dispensed
16 prescriptions for June 27, 2017, and on 3 dispensed prescriptions for June 22, 2017.

17 49. The Daily Log Report dated July 11, 2017 showed 2 prescriptions that were billed
18 and dispensed by Respondent Khan. The scanned copies of the original refill record showed
19 Respondent Khan dispensed the prescriptions on July 11, 2017.

20 50. The Daily Log Report for July 12, 2017 showed that 72 prescriptions were entered on
21 July 12, 2017. Inspectors Bayley and Delune were with Respondent Khan and Mr. Peraino
22 during the inspection on July 12, 2017 and did not see anyone processing the prescriptions.

23 51. The July 12, 2017 Daily Log Report contained a column entitled "PH/Tech." The
24 initials "AA" appeared multiple times in that column. Respondent Khan and Mr. Peraino stated
25 that "AA" stood for RPH Al-Qazzaz, who no longer worked for Respondent Excel Care.
26 Respondent Khan and Mr. Peraino further identified the initials "DM" as belonging to Darcy
27 Mendoza (Mendoza), a biller. When asked if Mendoza had typed and billed the prescriptions
28 from the first floor of Studio Pharmacy, Mr. Peraino agreed that she had.

1 52. Inspector Bayley selected seven new prescriptions on the July 12, 2017 Daily Log
2 Report and asked that Respondent Khan show her the scanned image of the original prescriptions.
3 None of the selected prescriptions showed images.

4 53. Inspector Bayley asked Respondent Khan and Mr. Peraino if they could print
5 prescription labels for the prescriptions shown on the daily log. Mr. Peraino firmly stated that
6 Inspector Bayley was only allowed to collect ten (10) prescription labels and that the rest of the
7 labels needed to be requested. Inspector Bayley secured ten (10) prescription labels.

8 54. Inspector Bayley asked Respondent Khan for the original prescriptions for the
9 prescriptions processed during the inspection by Mendoza. Mr. Peraino answered that there were
10 no original prescriptions. Inspector Bayley asked how Mendoza could process new prescriptions
11 without the originals. Mr. Peraino stated that the entries on the Daily Log Report were new and
12 refill prescriptions. Respondent Khan did not answer the question.

13 55. Inspector Bayley asked if Mendoza was entering prescription information in
14 anticipation of new prescriptions. Mr. Peraino stated that the prescriptions were unbilled.
15 Inspector Bayley asked how Mendoza knew what information to enter into the computer without
16 original prescriptions or images of original prescriptions. Mr. Peraino claimed that the e-faxed
17 original prescriptions were in Excel Care's computer.

18 56. Inspector Bayley asked Mr. Peraino to show her the e-faxed original prescriptions.
19 Mr. Peraino said they were on the computer located in his office across the hall, but he did not
20 have a password. Mr. Peraino became angry and told the inspectors to finish the inspection since
21 it was almost 5:00 PM. Mr. Peraino asked the inspectors to request the records later. Mr. Peraino
22 never provided any information about e-faxed originals. Respondent Khan stood next to Mr.
23 Peraino and did not assist in the collection of the original prescriptions.

24 57. Inspector Bayley requested the original prescriptions shown on the Daily Log for July
25 12, 2017. On or about July 28, 2017, Respondent Khan sent records from Studio Pharmacy.
26 Respondent Khan included a letter purportedly explaining the July 12, 2017 prescriptions.

27 58. In her letter, Respondent Khan stated that she had included original prescriptions for
28 unbilled prescriptions. Respondent Khan stated that, when a prescription was received for a

1 compounded medication that was incomplete, not covered, not contracted to fill, or required a call
2 to a prescriber, a call would be made to the prescriber's officer, and, if desired, an alternative drug
3 was sometimes selected by the prescriber. Respondent Khan stated that, if a pharmacist was not
4 available to take a verbal approval over the phone for the alternative prescription, the prescription
5 was marked as a "pending script" using the software's tagging system to generate a report for
6 following up with the prescriber in receiving a faxed approval following the initial verbal choice.

7 59. Forty-six (46) of the seventy-two (72) prescriptions on the July 12, 2017 Daily Log
8 were new prescriptions. All 46 new prescriptions are listed on the daily log as "unbilled." In an
9 ordinary pharmacy environment, it is unusual that all new prescriptions had problems being
10 processed and billed while all refill prescriptions did not have similar problems.

11 60. In August of 2017, Inspector Bayley contacted Micro Merchant System Inc. (Micro
12 Merchant), the software provider used by Respondent Excel Care and Studio Pharmacy.
13 Inspector Bayley determined that Micro Merchant could generate an audit trail. The audit trail
14 would show detailed processing of each prescription, including who entered data, who billed the
15 prescription, who made changes, the prescription scanning time, and when changes were made.
16 On or about August 25, 2017, Inspector Bayley asked Respondent Khan to request a report from
17 Micro Merchant for the prescriptions dispensed from September 1, 2016 to August 21, 2017. On
18 or about August 25, 2017, Inspector Bayley received and reviewed the audit trail report.

19 61. The audit trail report showed that Mendoza processed prescriptions on July 11, 2017
20 from 9:15 AM to 12:10 PM and on July 12, 2017 from 12:09 PM to 3:02 PM.

21 62. Inspector Bayley requested the June 2017 Daily Log Reports from Respondent Khan.
22 The Daily Log Reports showed ninety-five (95) prescriptions were processed. Under the column
23 "CoPay Ins," all ninety-five (95) prescriptions were billed to insurances with copayments of \$0 or
24 \$1.20. The most processed prescriptions were for Lidocaine 5% and Doxepin 5%.

25 63. The June 22, 2017 Daily Log showed three (3) new prescriptions written were billed
26 for Lidocaine 5% and Doxepin 5% by "FK" and "RU." Mr. Peraino identified "RU" as Ricardo
27 Urizar (Urizar), an individual who worked at Studio Pharmacy. A Board inspection report of
28 Studio Pharmacy also identified Urizar as working there.

1 64. The June 27, 2017 Daily Log showed forty-three (43) refill prescriptions were billed
2 for Lidocaine 5% and Doxepin 5% by “FK” and “RU.” All prescriptions were processed between
3 3:13 PM and 4:42 PM.

4 65. Inspector Bayley asked Respondent Khan and Mr. Peraino how they ensured their
5 prescriptions were delivered to patients. Mr. Peraino stated that the pharmacy computer had a
6 function to confirm the deliveries. A review of select prescriptions and computer data revealed
7 that information confirming deliveries was often incomplete or unavailable. Respondent Excel
8 Care did not consistently use the function to confirm or track deliveries.

9 66. In at least one instance, Respondent Excel Care sent a prescription to an address that
10 had a previous prescription delivery returned. When Inspector Bayley asked Mr. Peraino why the
11 prescription was sent a second time to an undeliverable address, Mr. Peraino did not respond.

12 67. Original prescriptions written by Dr. Tseng were found in a file cabinet inside the
13 pharmacy area. Mr. Peraino stated that all billing claims for the prescriptions related to “UC”
14 were reversed, and, as a result, prescription information would not show on the pharmacy data.
15 Mr. Peraino stated that the pharmacy had kept the prescriptions for record keeping only.

16 68. The prescriptions related to the UC complaint were titled “Prescription Request for
17 Specialty Formulations.” Dr. Tseng mainly prescribed Inflammation Reduction Pack, Xelitral
18 Pak, and Mebolic for patients with birth years from 1992 to 1998. Physician Assistant James
19 Lauerman (P.A. Lauerman) also wrote prescriptions for Inflammation Reduction Pak, Xelitral
20 Pak, and Mebolic for patients with birth years from 1993 to 1998. There were labels affixed to
21 the back of the original prescriptions which indicated prescriptions had been processed. Most of
22 the labels were stamped with the word “FILED.” “FACSIMILE” was typed on all affixed
23 prescription fill labels, but there was no indication that the prescriptions had been faxed to
24 Respondent Excel Care by a prescriber. All prescription orders showed refills. Most of the
25 electronically entered initials for dispensing pharmacist read “A.A.” The initials “F.K.” rarely
26 appeared as dispensing pharmacist. There were no handwritten dispensing pharmacist’s initials.

27 69. An examination of the prescriptions for lidocaine ointment 5% showed that the titles
28 of the prescriptions were “Prescription Request.” A fax number was listed, but there was no

1 indication that prescribers faxed the prescriptions to Respondent Excel Care. All prescription
2 orders showed refills. Most of the initials for the dispensing pharmacist were “FK.”
3 Prescriptions without “FILED” stamps showed handwritten pharmacist initials of “AA.”

4 70. Inspector Bayley performed an audit of lidocaine 5% ointment 30 gram and
5 doxepin CL 5% cream 45 gram at Respondent Excel Care for the period of September 1, 2016
6 through July 12, 2017. The audit revealed the following significant discrepancies, which
7 supported the allegations of billing fraud committed by Respondent Excel Care:

8 Drug Name	9 Total Acquisition Records	Total Dispensing Records	Stock on Hand	Discrepancies
10 Lidocaine 5% ointment 30 g (45861-0061-30)	46,080 (1,536 each)	45,540 (1,518 each)	0	540 (18 tubes)
11 Doxepin HCL 5% cream 45 g (40085-0716-45)	26,325 (585 each)	29,385 (653 each)	0	-3,060 (-68 tubes)

13
14 71. Inspector Bayley requested that Respondent Khan conduct an audit for the same time
15 period. Respondent Khan’s audit also showed a shortage of 18 tubes of lidocaine 5% ointment 30
16 gram (billed/dispensed quantity was larger than purchased quantity). With respect to doxepin
17 HCL cream, Respondent Khan claimed the shortage should have been only 4 tubes. In support of
18 her claim regarding the doxepin HCL cream, Respondent Khan emailed a dispensing report to
19 Inspector Bayley that contradicted the dispensing report collected during the inspection.
20 Respondent Khan claimed that the shorted tubes had been found in the pharmacy’s file cabinet.
21 However, the Board inspectors had searched the entire premises during the inspection, including
22 the file cabinet and did not find any drugs in the file cabinet.

23 72. The Board inspectors noted that staff members at Studio Pharmacy were closely
24 involved in entering and processing prescriptions for Respondent Excel Care. The Board
25 inspectors visited Studio Pharmacy on or about August 11, 2017. They entered the pharmacy and
26 saw three staff members behind the pharmacy counter: Mendoza, Urizar, and Lucy Vahanyan
27 (Vahanyan). After waiting for Respondent Khan, Inspector Delune went upstairs to find her
28 while Inspector Bayley began interviewing the staff members.

1 73. When Inspector Bayley asked Mendoza about her duties, she said that she entered
2 prescription data and billed prescriptions. Inspector Bayley asked Mendoza if she was a
3 pharmacy technician, and Mendoza said that she was.

4 74. Urizar stated that his duties consisted of emptying the trash, taking care of walk-in
5 patients, and “helping.” When asked if he billed or entered prescription data, he stated he did not
6 do so. Urizar said he sometimes entered patient information while he helped patients. However,
7 the daily logs secured from Respondent Excel Care frequently showed Urizar’s initials.

8 75. Respondent Khan appeared with a phone in hand and advised the pharmacy staff
9 members not to answer any questions. Inspector Bayley saw Respondent Khan and Mendoza
10 walk out together. Inspector Bayley waited for them, but they did not return. Inspector Bayley
11 walked out to look for Mendoza and saw Respondent Khan and Mendoza talking and standing
12 around the corner of the pharmacy. Inspector Bayley asked Respondent Khan and Mendoza to
13 come in. After Mendoza returned, Inspector Bayley saw Mendoza grabbing her purse. Inspector
14 Bayley asked if Mendoza was leaving, and Mendoza acknowledged that she was. Inspector
15 Bayley asked if and when Mendoza would be returning, and Mendoza stated that she would
16 return but did not know when.

17 76. Inspector Bayley asked who could generate reports from the pharmacy computer.
18 Respondent Khan stated that she could and sat on Mendoza’s chair. Inspector Delune asked
19 Respondent Khan to show her how Respondent Excel Care received e-faxed prescriptions.
20 Inspector Bayley saw a file named “Excel Care” on the computer screen. Respondent Khan
21 opened a login for Faxage and purportedly tried to enter the password several times. Respondent
22 Khan claimed that her password was not working. It became clear that Respondent Khan would
23 not show or provide any records related to Respondent Excel Care and had intentionally removed
24 Mendoza from the pharmacy. As the duty pharmacist and pharmacist-in-charge, it would not
25 make sense for Respondent Khan not to have access to view e-faxed prescriptions.

26 77. The inspectors tried to generate a report showing detailed transaction data for
27 processing each prescription such as date and time for data entry, billing, charges, Rx notes log
28 (for USPS tracking number), and prescription information. Respondent Khan called Micro

1 Merchant and said the report would take three to four days. The inspectors asked Respondent
2 Khan to request the report while the inspectors were present.

3 78. Towards the end of the inspection of Studio Pharmacy, the inspectors asked why
4 Respondent Khan was not able to access the Faxage account for Excel Care. Mr. Tabakian, the
5 owner of Studio Pharmacy, was present, and Respondent Khan maintained eye contact with him
6 whenever she spoke. Respondent Khan stated that she could access the account from the
7 computer at Respondent Excel Care since the Faxage account was set up as an auto log-in which
8 did not require a password but that she could not do so from Studio Pharmacy. Inspector Bayley
9 asked Respondent Khan whether she meant the computer in the locked pharmacy area of
10 Respondent Excel Care or the other computer in the office. Respondent Khan stated she could
11 log in from both computers. Respondent Khan had not provided this information during the July
12 2017 inspection, and she and Mr. Peraino had acted as if the computer in the office was the only
13 one that could log in to the Faxage account. Additionally, Respondent Khan did not offer to
14 correct Mr. Peraino when he claimed he did not have the password for the Faxage account.

15 79. Respondent Khan stated that no one from Studio Pharmacy had access to the Faxage
16 account for Respondent Excel Care. However, during the July 2017 inspection, Respondent
17 Khan and Mr. Peraino had stated that Mendoza had typed and billed prescriptions for Respondent
18 Excel Care from Studio Pharmacy. In addition, the Daily Log of Respondent Excel Care for July
19 12, 2020 (the day of the inspection) showed prescriptions typed and billed by Mendoza from
20 Studio Pharmacy. When asked why she did not show the Faxage account during the July 2017
21 inspection and why Mr. Peraino stated that Mendoza had entered data and billed prescriptions
22 from Studio Pharmacy, Respondent Khan stated she did not remember what was said during the
23 July 2017 inspection and that the inspectors should call Mr. Peraino with questions.

24 80. Inspector Bayley asked Respondent Khan if Respondent Excel Care and Studio
25 Pharmacy shared a common electronic file. Respondent Khan agreed that they did, but she
26 repeated that no one from Studio Pharmacy had computer access for Respondent Excel Care.
27 According to Respondent Khan and Mr. Tabakian, none of the staff members at Studio Pharmacy
28 worked for Respondent Excel Care except for Respondent Khan and Mr. Peraino. However,

1 Respondent Excel Care's Daily Logs between approximately June 1, 2017 and July 12, 2017
2 showed the initials "DM" and "RU" under "Tech" for pharmacy technician. "DM" were
3 Mendoza's initials, and "RU" were Urizar's initials.

4 81. Respondent Khan then stated that Mr. Peraino printed prescriptions from Respondent
5 Excel Care and brought the printed prescriptions to Studio Pharmacy for entering data and billing
6 prescriptions by Mendoza and Urizar. Respondent Excel Care and Studio Pharmacy are located
7 approximately 46 miles away from one another. Moreover, during the July 2017 inspection, Mr.
8 Peraino had claimed that he did not have the password for the Faxage account.

9 82. When asked about the workflow procedure, Respondent Khan stated that she did not
10 know and that the inspectors should ask Mr. Peraino about it. When Inspector Bayley repeated
11 Respondent Khan's answer, Respondent Khan did not comment. Mr. Tabakian said loudly to her
12 that if she did not know, her answer should be that she did not know. Respondent Khan stated
13 that she did not know. Mr. Tabakian then became suddenly angry and claimed that the inspectors
14 were bullying Respondent Khan. Mr. Tabkian shouted loudly about the inspection and began
15 using profanity. The inspectors noted that Respondent Khan appeared worried about saying
16 anything in front of Mr. Peraino and Mr. Tabakian. Respondent Khan consistently refused to
17 show where Respondent Excel Care's prescriptions had originated from, and her secretive and
18 uncooperative behavior made it extremely difficult to collect records.

19 83. During the investigation, Inspector Bayley reviewed wholesalers' invoices and proof
20 of delivery sheets. She found three delivery addresses used for Respondent Excel Care: 5272
21 Francis St. in Chino, California, 5272 Francis St. in Alta Loma, California, and Francis Animal
22 Hospital located at 5284 Francis Ave. in Chino, California. Respondent Excel Care's premises
23 were located at 5272 Francis St. in Chino, California. The location of 5284 Francis Avenue in
24 Chino belonged to Francis Animal Hospital. Documentation showed that dangerous drugs had
25 been delivered to Francis Animal Hospital on behalf of Respondent Excel Care on or about the
26 following dates: November 9, 2016, April 13, 2017, and June 20, 2017. In addition, on at least
27 two occasions, persons whose initials Respondent Khan did not recognize had signed on behalf of
28 Respondent Excel Care for dangerous drugs that were addressed to 5272 Francis St in Alta Loma.

1 84. On or about March 11, 2019, the inspectors called Francis Animal Hospital and spoke
2 with Dr. J. Choi and Peggy Hart. Both Dr. Choi and Ms. Hart had signed for deliveries of
3 dangerous drugs on behalf of Respondent Excel Care, but Respondent Khan had not recognized
4 their initials. Dr. Choi and Ms. Hart told the inspectors that they had received unknown packages
5 for Respondent Excel Care after a delivery man had asked if they could do so.

6 85. On or about August 9, 2017, the inspectors interviewed RPH Al-Qazzaz. He stated
7 that he had worked for Respondent Excel Care from approximately January 30, 2017 to June 16,
8 2017. RPH Al-Qazzaz stated that Respondent Khan and Mr. Peraino knew he had just obtained
9 his pharmacist license. RPH Al-Qazzaz stated that Respondent Khan visited Respondent Excel
10 Care about two to three times per month. Mr. Peraino visited Respondent Excel Care once a
11 week and did so with the owner of Studio Pharmacy about half of the time.

12 86. RPH Al Qazzaz stated Respondent Khan and Mr. Peraino had explained that
13 prescriptions were faxed via the internet from physician's offices and then typed and billed by a
14 biller into Respondent Excel Care's computer. The original prescriptions would be delivered and
15 RPH Al-Qazzaz would dispense medications. RPH Al-Qazzaz stated that Respondent Excel Care
16 did not serve any walk-in patients.

17 87. RPH Al-Qazzaz stated that he did not receive access to the faxed prescriptions.
18 Mendoza entered prescription data and billed prescriptions from Studio Pharmacy for Respondent
19 Excel Care. Respondent Khan or Mr. Peraino brought copies of prescriptions to Respondent
20 Excel Care. Respondent Khan ordered drugs from wholesalers. When drugs were delivered,
21 RPH Al-Qazzaz filled the prescriptions and used the copies of "faxed" prescriptions as the
22 originals. RPH Al-Qazzaz always wrote his initials on the prescription stickers on the back of
23 prescriptions he dispensed. When prescriptions were filled, RPH Al-Qazzaz would call
24 Respondent Khan, who would send someone to ship the prescriptions.

25 88. RPH Al-Qazzaz typically reviewed daily logs to determine if there were prescriptions
26 to be filled. In April of 2017, RPH Al-Qazzaz saw prescriptions to be filled, and Mr. Peraino
27 brought copies of prescriptions. In about two to three days, medications were ready to deliver,
28

1 but RPH Al-Qazzaz was told to return the medications since the claims were reversed. RPH Al-
2 Qazzaz was asked to file the copies of the prescriptions but was not told about the UC complaint.

3 89. RPH Al-Qazzaz related that Respondent Khan had visited the pharmacy in March of
4 2017 and told RPH Al-Qazzaz that Respondent Excel Care would start compounding creams.
5 Respondent Khan and two technicians worked on the compounding, but, after two weeks,
6 Respondent Khan stated that Respondent Excel Care would not compound anymore.

7 90. On or about August 24, 2017, Inspector Bayley interviewed Registered Pharmacist
8 Mehul Parikh (RPH Parikh). RPH Parikh stated that he worked for Respondent Excel Care from
9 approximately December 16, 2016 to January 27, 2017 and that it was his first job after becoming
10 a pharmacist. Respondent Khan and Mr Peraino hired RPH Parikh. RPH Parikh stated that he
11 saw Respondent Khan about two times and that Mr. Peraino was there three to five times per
12 week. Respondent Excel Care did not dispense any walk-in patient prescriptions. When RPH
13 Parikh arrived for work, he would find hard copies of prescriptions. Prescriptions were already
14 typed and billed on the computer. RPH Parikh printed prescription labels, scanned the hard
15 copies, dispensed prescriptions, and filed the hard copies. RPH Parikh always put his initials on
16 the back of hard copies after dispensing. RPH Parikh stated that he did not know prescriptions
17 were faxed and had never seen anyone printing original prescriptions at the pharmacy.

18 91. Inspector Delune sent surveys to patients to whom Respondent Excel Care had
19 allegedly dispensed lidocaine 5% ointment and doxepin hydrochloride 5%. Of the 32 survey
20 responses received, 11 patients stated they did not receive the prescriptions.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct)

23 92. Respondent Excel Care is subject to disciplinary action under Code section 4301,
24 subdivisions (f) and (g), in that Respondent Excel Care committed acts involving moral turpitude,
25 dishonesty, fraud, deceit, and/or corruption and knowingly made and/or signed documents falsely
26 representing the existence or nonexistence of a state of facts. Respondent Excel Care billed
27 fraudulent prescriptions to patients' insurance that Respondent Excel Care had reason to know
28 were not legitimately prescribed and that at least some of the patients would not be using or did

1 not receive. Respondent Excel Care also made false statements to Board inspectors and provided
2 fraudulent dispensing records. Complainant realleges paragraphs 30 through 91.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct—Subverting an Investigation)

5 93. Respondent Excel Care is subject to disciplinary action under Code section 4301,
6 subdivision (q), in that Respondent Excel Care attempted to subvert an investigation of the Board.
7 During the July 12, 2017 inspection of the premises of Respondent Excel Care, Respondent Excel
8 Care refused to provide faxed original prescription documents for the prescriptions shown on the
9 daily log for July 12, 2017. Respondent Excel Care also made false statements to Board
10 inspectors and provided fraudulent dispensing records. Complainant realleges paragraphs 30
11 through 91.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records)

14 94. Respondent Excel Care is subject to disciplinary action under Code section 4301,
15 subdivisions (j) and (o), in conjunction with Code sections 4081, subdivision (a), and 4105,
16 subdivisions (a) and (d)(1), in that Respondent Excel Care failed to retain records of the sale,
17 acquisition, receipt, shipment, or disposition of dangerous drugs on its licensed premises in a
18 readily retrievable form and failed to provide original prescription documents related to the
19 Board's investigation. In addition, a Board audit showed variances for 18 tubes of lidocaine 5%
20 30 g tubes and for 68 doxepin 5% 45 g tubes, both dangerous drugs. Complainant realleges
21 paragraphs 30 through 91.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 (Prohibited Acts)

24 95. Respondent Excel Care is subject to disciplinary action under Code section 4301,
25 subdivisions (j) and (o), in conjunction with Code section 4169, subdivision (a)(5), in that
26 Respondent Excel Care failed to retain records of the acquisition or disposition of dangerous
27 drugs for at least three (3) years and failed to provide original prescription documents related to
28 the Board's investigation. Complainant realleges paragraphs 30 through 91.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Designation of Pharmacist-in-Charge)

3 96. Respondent Excel Care is subject to disciplinary action under Code section 4301,
4 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1709.1,
5 subdivisions (a) and (b), in that Respondent Excel Care failed to give Respondent Khan adequate
6 authority to operate the pharmacy. When questioned by Board inspectors, Respondent Khan
7 lacked basic information, provided inconsistent responses, and referred the Board inspectors to
8 Mr. Peraino for responses. Complainant realleges paragraphs 30 through 91.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 (Access to Dangerous Drugs and Devices)

11 97. Respondent Excel Care is subject to disciplinary action under Code section 4301,
12 subdivisions (j) and (o) in conjunction with Code section 4116, subdivision (a), for permitting a
13 person other than a pharmacist, intern pharmacist, authorized officer of the law or person
14 authorized to prescribe access to areas in which dangerous drugs were stored, possessed,
15 prepared, manufactured, derived, compounded, dispensed, or repackaged. On or about July 12,
16 2017, an unidentified person was present in the pharmacy, and Respondent Khan lacked
17 knowledge of his identity. Complainant realleges paragraphs 30 through 91.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Operational Standards and Security and Current Inventory)

20 98. Respondent Excel Care is subject to disciplinary action under Code section 4301,
21 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1714,
22 subdivision (b), and California Code of Regulations, title 16, section 1718, in that Respondent
23 Excel Care failed to maintain its facilities, space, fixtures, and equipment so drugs were safely
24 and properly prepared, maintained, secured and distributed. A Board audit for September 1, 2016
25 to July 12, 2017 revealed the following discrepancies:

26 ///

27 ///

28 ///

Drug Name	Total Acquisition Records	Total Dispensing Records	Stock on Hand	Discrepancies
Lidocaine 5% ointment 30 gram (45861-0061-30)	46,080 (1,536 each)	45,540 (1,518 each)	0	540 (18 tubes)
Doxepin HCL 5% cream 45 gram (40085-0716-45)	26,325 (585 each)	29,385 (653 each)	0	-3,060 (-68 tubes)

Complainant realleges paragraphs 30 through 91.

EIGHTH CAUSE FOR DISCIPLINE

(Restrictions on Ordering and Receiving Delivery of Dangerous Drugs and Devices)

99. Respondent Excel Care is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in conjunction with Code section 4059.5, subdivision (a), in that Respondent Excel Care failed to ensure that all dangerous drugs and devices were delivered to the licensed premises and signed for and received by a pharmacist. On at least three occasions, Respondent Excel Care permitted dangerous drugs to be delivered to and received by Francis Animal Hospital. Further, on at least two occasions, Respondent Excel Care permitted unidentified persons to receive dangerous drugs at Respondent Excel Care's premises.

Complainant realleges paragraphs 30 through 91.

NINTH CAUSE FOR DISCIPLINE

(Pharmacy Technician Supervision and Operating a Pharmacy without a Pharmacist)

100. Respondent Excel Care is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in conjunction with Code sections 4115, subdivision (a), and 4116, subdivision (a), in that Respondent Excel Care permitted an unsupervised technician to enter data and bill 72 prescriptions from another location without pharmacist supervision. Complainant realleges paragraphs 30 through 91.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

101. Respondent Khan is subject to disciplinary action under Code section 4301, subdivision (f), in that, while Respondent Khan was pharmacist-in-charge, Respondent Excel

Care committed acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption and knowingly made or signed documents falsely representing the existence or nonexistence of a state of facts. While Respondent Khan was pharmacist-in-charge, Respondent Excel Care billed fraudulent prescriptions to patients' insurance that Respondent Excel Care had reason to know were not legitimately prescribed and that at least some of the patients would not be using or did not receive. In addition, while Respondent Khan was pharmacist-in-charge, Respondents also made false statements to Board inspectors and provided fraudulent dispensing records.

Complainant realleges paragraphs 30 through 91.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Subverting an Investigation)

102. Respondent Khan is subject to disciplinary action under Code section 4301, subdivision (q), in that, while Respondent Khan was pharmacist-in-charge, Respondents attempted to subvert an investigation of the Board. During the July 12, 2017 inspection of the premises of Respondent Excel Care, Respondents refused to provide faxed original prescription documents for the prescriptions shown on the daily log for July 12, 2017. Respondents also made false statements to Board inspectors and provided fraudulent dispensing records. Complainant realleges paragraphs 30 through 91.

TWELFTH CAUSE FOR DISCIPLINE

(Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records)

103. Respondent Khan is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in conjunction with Code sections 4081, subdivision (a), and 4105, subdivisions (a) and (d)(1), in that, while Respondent Khan was pharmacist-in-charge, Respondent Excel Care failed to retain records of the sale, acquisition, receipt, shipment, or disposition of dangerous drugs on its licensed premises in a readily retrievable form and failed to provide original prescription documents related to the Board's investigation. In addition, a Board audit showed variances for 18 tubes of lidocaine 5% 30 g tubes and for 68 doxepin 5% 45 g tubes. Complainant realleges paragraphs 30 through 91.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 (Prohibited Acts)

3 104. Respondent Khan is subject to disciplinary action under Code section 4301,
4 subdivisions (j) and (o), in conjunction with Code section 4169, subdivision (a)(5), in that, while
5 Respondent Khan was pharmacist-in-charge, Respondent Excel Care failed to retain records of
6 the acquisition or disposition of dangerous drugs for at least three (3) years and failed to provide
7 original prescription documents related to the Board's investigation. Complainant realleges
8 paragraphs 30 through 91.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

10 (Designation of Pharmacist-in-Charge)

11 105. Respondent Khan is subject to disciplinary action under Code section 4301,
12 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1709.1,
13 subdivisions (a) and (b), in that while Respondent Khan was pharmacist-in-charge of Respondent
14 Excel Care, she failed to exercise responsibility for the daily operation of the pharmacy. When
15 questioned by Board inspectors, Respondent Khan was unable to speak to pharmacy operations,
16 lacked basic information, provided inconsistent responses, and referred the Board inspectors to
17 Mr. Peraino for responses. Complainant realleges paragraphs 30 through 91.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 (Access to Dangerous Drugs and Devices)

20 106. Respondent Khan is subject to disciplinary action under Code section 4301,
21 subdivisions (j) and (o) in conjunction with Code section 4116, subdivision (a), in that, while
22 Respondent Khan was the pharmacist-in-charge, Respondent Excel Care permitted a person other
23 than a pharmacist, intern pharmacist, authorized officer of the law or person authorized to
24 prescribe access to areas in which dangerous drugs were stored, possessed, prepared,
25 manufactured, derived, compounded, dispensed, or repackaged. On or about July 12, 2017, an
26 unidentified person was present in the pharmacy, and Respondent Khan lacked knowledge of his
27 identity. Furthermore, as pharmacist-in-charge of Respondent Excel Care and of Studio
28

Pharmacy, Respondent Khan permitted Mendoza to enter data and bill for 72 prescriptions from Studio Pharmacy without a pharmacist present. Complainant realleges paragraphs 30 through 91.

SIXTEENTH CAUSE FOR DISCIPLINE

(Operational Standards and Security and Current Inventory)

107. Respondent Khan is subject to disciplinary action under Code section 4301, subdivision (o) in conjunction with California Code of Regulations, title 16, sections 1714, subdivision (b), and 1718 in that, while Respondent Khan was pharmacist-in-charge, Respondent Excel Care failed to maintain its facilities, space, fixtures, and equipment so drugs were safely and properly prepared, maintained, secured and distributed. A Board audit for the period of September 1, 2016 to July 12, 2017 revealed the following discrepancies:

Drug Name	Total Acquisition Records	Total Dispensing Records	Stock on Hand	Discrepancies
Lidocaine 5% ointment 30 gram (45861-0061-30)	46,080 (1,536 each)	45,540 (1,518 each)	0	540 (18 tubes)
Doxepin HCL 5% cream 45 gram (40085-0716-45)	26,325 (585 each)	29,385 (653 each)	0	-3,060 (-68 tubes)

Complainant realleges paragraphs 30 through 91.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Restrictions on Ordering and Receiving Delivery of Dangerous Drugs and Devices)

108. Respondent Khan is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in conjunction with Code section 4059.5, subdivision (a), in that, while Respondent Khan was pharmacist-in-charge, Respondent Excel Care failed to ensure that all dangerous drugs and devices were delivered to the licensed premises and signed for and received by a pharmacist. On at least three occasions while Respondent Khan was pharmacist-in-charge, Respondent Excel Care permitted dangerous drugs to be delivered to and received by Francis Animal Hospital. Further, on at least two occasions while Respondent Khan was pharmacist-in-charge, Respondent Excel Care permitted unidentified persons to receive dangerous drugs at Respondent Excel Care's licensed premises. Complainant realleges paragraphs 30 through 91.

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 (Pharmacy Technician Supervision and Operating a Pharmacy without a Pharmacist)

3 109. Respondent Khan is subject to disciplinary action under Code section 4301,
4 subdivisions (j) and (o), in conjunction with Code sections 4115, subdivision (a), and 4116,
5 subdivision (a), in that, while Respondent Khan was pharmacist-in-charge, Respondent Excel
6 Care permitted Mendoza to enter data and bill 72 prescriptions from Studio Pharmacy without
7 pharmacist supervision. Complainant realleges paragraphs 30 through 91.

8 **OTHER MATTERS**

9 110. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
10 PHY 54610 issued to Respondent Excel Care, Excel Care Pharmacy Inc. shall be prohibited from
11 serving as manager, administrator, owner, members, officer, director, associate, or partner of a
12 licensee for five years if Pharmacy Permit Number PHY 54610 is placed on probation or until
13 Pharmacy Permit Number PHY 54610 is reinstated if it is revoked.

14 111. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
15 PHY 54610 issued to Respondent Excel Care for conduct that occurred while Anthony Peraino
16 was a manager, administrator, owner, member, officer, director, associate, partner or other person
17 with management or control of Respondent Excel Care and had knowledge of or knowingly
18 participated in any conduct for which the license was disciplined, Anthony Peraino shall be
19 prohibited from serving as manager, administrator, owner, members, officer, director, associate,
20 or partner of a licensee for five years if Pharmacy Permit Number PHY 54610 is placed on
21 probation or until Pharmacy Permit Number PHY 54610 is reinstated if it is revoked.

22 112. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
23 PHY 54610 issued to Respondent Excel Care for conduct that occurred while Respondent Khan
24 was a manager, administrator, owner, member, officer, director, associate, partner or other person
25 with management or control of Respondent Excel Care and had knowledge of or knowingly
26 participated in any conduct for which the license was disciplined, Respondent Khan shall be
27 prohibited from serving as manager, administrator, owner, members, officer, director, associate,
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1 or partner of a licensee for five years if Pharmacy Permit Number PHY 54610 is placed on
2 probation or until Pharmacy Permit Number PHY 54610 is reinstated if it is revoked.

3 **PRAYER**

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

6 1. Revoking or suspending Pharmacy Permit Number PHY 54610, issued to Excel Care
7 Pharmacy, Inc., dba Excel Care Pharmacy, Asli Peraino, Owner;

8 2. Revoking or suspending Pharmacist License Number RPH 65823, issued to Fauzia
9 Riasat Khan;

10 3. Prohibiting Excel Care Pharmacy, Inc. from serving as a manager, administrator,
11 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
12 Permit Number PHY 54610 is placed on probation or until Pharmacy Permit Number PHY 54610
13 is reinstated if Pharmacy Permit Number PHY 54610 issued to Excel Care Pharmacy, Inc. is
14 revoked;

15 4. Prohibiting Anthony Peraino from serving as a manager, administrator, owner,
16 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
17 Number PHY 54610 is placed on probation or until Pharmacy Permit Number PHY 54610 is
18 reinstated if Pharmacy Permit Number PHY 54610 issued to Excel Care Pharmacy, Inc. is
19 revoked;

20 5. Prohibiting Fauzia Riasat Khan from serving as a manager, administrator, owner,
21 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
22 Number PHY 54610 is placed on probation or until Pharmacy Permit Number PHY 54610 is
23 reinstated if Pharmacy Permit Number PHY 54610 issued to Excel Care Pharmacy, Inc. is
24 revoked;

25 6. Ordering Excel Care Pharmacy Inc., Fauzia Riasat Khan, and Kare Food Inc. to pay
26 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3; and,

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

DATED: July 6, 2020



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

LA2019505296