

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

In the Matter of the Accusation Against:

**EXCEL CARE PHARMACY, INC., DBA EXCEL CARE PHARMACY,
ASLI PERAINO
Pharmacy Permit No. PHY 54610;**

**HOWARD SCHULTZ
Registered Pharmacist License No. RPH 20459;**

and

**FAUZIA RIASAT KHAN
Pharmacist License No. RPH 65823**

Respondents.

Agency Case No. 6825

OAH No. 2021120131

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 November 30, 2022.

It is so ORDERED on October 31, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 NANCY A. KAISER
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6371
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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**

OAH No. 2021120131

**STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
HOWARD SCHULTZ ONLY**

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

19 **HOWARD SCHULTZ**
12600 Huston St.
North Hollywood, CA 91607

20 **Registered Pharmacist License No. RPH**
21 **20459,**

22 **and**

23 **FAUZIA RIASAT KHAN**
16901 Rinaldi Street
Granada Hills, CA 91344

24 **Pharmacist License No. RPH 65823**

25 Respondents.

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

28 ///

1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Rob Bonta, Attorney General of the State of California, by Langston M. Edwards, Deputy
5 Attorney General.

6 2. On or about July 25, 1957, the Board issued Pharmacist License Number RPH 20459
7 to Howard Schultz (Respondent Schultz). The Pharmacist License was in full force and effect at
8 all times relevant to the charges brought herein and will expire on April 30, 2024, unless renewed.

9 3. Respondent Schultz is represented in this proceeding by attorney Herbert L.
10 Weinberg, Esq., whose address is: Fenton Law Group, LLP, 1990 South Bundy Drive, Suite 777
11 Los Angeles, CA 90025.

12
13 **JURISDICTION**

14 4. Accusation No. 6825 was filed before the Board, and is currently pending against
15 Respondent. The Accusation and all other statutorily required documents were properly served
16 on Respondent on October 25, 2021. Respondent timely filed a Notice of Defense contesting the
17 Accusation. A copy of Accusation No. 6825 is attached as Exhibit A and incorporated by
18 reference.

19 **ADVISEMENT AND WAIVERS**

20 5. Respondent has carefully read, fully discussed with counsel, and understands the
21 charges and allegations in Accusation No. 6825. Respondent also has carefully read, fully
22 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
23 Order.

24 6. Respondent is fully aware of his legal rights in this matter, including the right to a
25 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
26 the witnesses against them; the right to present evidence and to testify on his own behalf; the right
27 to the issuance of subpoenas to compel the attendance of witnesses and the production of
28

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 that the charges and allegations in Accusation No. 6825, if proven at a hearing, constitute cause for imposing discipline upon its Pharmacy Permit.

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

10. Respondent understands that by signing this stipulation Entity enables the Board to issue an order accepting the surrender of their Pharmacy Permit without further process.

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 he may not withdraw his 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 Pharmacist License Number RPH 20459, issued to Howard Schultz, is surrendered and accepted by the Board.

1. The surrender of Respondent's Pharmacist License 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 Pharmacist in California as of the effective date of the Board's Decision and Order.

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

4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order. Respondent stipulates that should Respondent apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application.

Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to, taking and passing licensing examination(s) as well as fulfilling any education or experience requirements prior to the issuance of a new license.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$8,300 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Herbert L. Weinberg, Esq. I understand the stipulation and the effect it will have on my Pharmacist 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: _____

HOWARD SCHULTZ
Respondent

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

DATED: _____

HERBERT L. WEINBERG, ESQ.
Attorney for Respondent

1 Respondent shall satisfy all requirements applicable to that license as of the date the application is
2 submitted to the Board, including, but not limited to, taking and passing licensing examination(s)
3 as well as fulfilling any education or experience requirements prior to the issuance of a new
4 license.

5 5. Respondent shall pay the agency its costs of investigation and enforcement in the
6 amount of \$8,300 prior to issuance of a new or reinstated license.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney Herbert L. Weinberg, Esq. I understand the stipulation and the
10 effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License
11 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
12 Order of the Board of Pharmacy.

13
14 DATED: 9-19-2022


HOWARD SCHULTZ

Royce L. Orloff, Agent for Respondent

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

19
20 DATED: 9/20/2022


HERBERT L. WEINBERG, ESQ.
Attorney for Respondent

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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: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
NANCY A. KAISER
Supervising Deputy Attorney General

LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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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: September 22, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
NANCY A. KAISER
Supervising Deputy Attorney General

Langston M. Edwards

LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6825

1 ROB BONTA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 MICHELLE NIJM
Deputy Attorney General
4 State Bar No. 297168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6049
6 Facsimile: (916) 731-2126
E-mail: Michelle.Nijm@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6825

13
14 **FAUZIA RIASAT KHAN**
15 **16901 Rinaldi Street**
Granada Hills, CA 91344

FIRST AMENDED ACCUSATION

16 **Pharmacist License No. RPH 65823**

17 **HOWARD SCHULTZ**
18 **12600 Huston St.**
North Hollywood, CA 91607

19 **Pharmacist License No. RPH 20459**

20 **ASLI PERAINO**
21 **5272 Francis St.**
Chino, CA 91710

22 **and**

23 **ANTHONY PERAINO**
24 **5272 Francis St.**
Chino, CA 91710

25 Respondents.

26
27 ///

28 ///

1 **PARTIES**

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

4 2. On or about September 12, 2016, the Board of Pharmacy (Board) issued Pharmacy
5 Permit Number PHY 54610 to Excel Care Pharmacy, Inc., dba Excel Care Pharmacy, Asli
6 Peraino, Owner (Excel Care). The Pharmacy Permit was in full force and effect at all times
7 relevant to the charges brought here. The Pharmacy Permit expired on or about November 19,
8 2019 pursuant to a Discontinuance of Business filed on that date. The Pharmacy Permit was
9 revoked on or about September 15, 2021 in the *Matter of the Accusation against Excel Care*
10 *Pharmacy Inc. dba Excel Care Pharmacy, Asli Peraino, Owner*, Case No. 6825.

11 3. On or about August 17, 2011, the Board issued Pharmacist License Number RPH
12 65823 to Fauzia Riasat Khan (Respondent Khan). The Pharmacist License was in full force and
13 effect at all times relevant to the charges brought herein and will expire on December 31, 2022,
14 unless renewed.

15 4. On or about July 25, 1957, the Board issued Pharmacist License Number RPH 20459
16 to Howard Schultz (Respondent Schultz). The Pharmacist License was in full force and effect at
17 all times relevant to the charges brought herein and will expire on April 30, 2022, unless renewed.

18 **JURISDICTION**

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

22 6. Section 4300 of the Code states, in pertinent part:
23 (a) Every license issued may be suspended or revoked.
24 (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:
25 (1) Suspending judgment.
26 (2) Placing him or her upon probation.
27 (3) Suspending his or her right to practice for a period not exceeding one year.
28 (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.

...

1 7. Section 4300.1 of the Code states:

2 The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
3 of law or by order or decision of the board or a court of law, the placement of a license on a
4 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
5 jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6 proceeding against, the licensee or to render a decision suspending or revoking the license.

7 8. Section 118, subdivision (b), of the Code provides that the

8 suspension/expiration/surrender/cancellation of a license shall not deprive the
9 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
10 within which the license may be renewed, restored, reissued or reinstated.

11 STATUTORY PROVISIONS

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

13 (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
14 without an appropriate prior examination and a medical indication, constitutes unprofessional
15 conduct. An appropriate prior examination does not require a synchronous interaction between
16 the patient and the licensee and can be achieved through the use of telehealth, including, but not
17 limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the
18 appropriate standard of care.

19 ...

20 10. Section 4022 of the Code states:

21 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
22 humans or animals, and includes the following:

23 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
24 prescription,” “Rx only,” or words of similar import.

25 (b) Any device that bears the statement: “Caution: federal law restricts this device to sale by
26 or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in
27 with the designation of the practitioner licensed to use or order use of the device.

28 (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.

 11. 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.

 ...

 12. 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.

 ...

 13. 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.

...

14. 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.

...

15. 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.”

16. 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.

...

17. 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.

...

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

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

1 ...
(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or
2 dangerous devices for at least three years.
3 ...

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

5 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
6 not limited to, any of the following:

7 ...
(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
8 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.

9 ...
(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.

10 ...
(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
11 federal and state laws and regulations governing pharmacy, including regulations established by
the board or by any other state or federal regulatory agency.

12 ...
(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
board.

13 ...
14 20. Section 4307 of the Code states, in pertinent part:

15 (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
16 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
17 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,
18 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,
19 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
20 administrator, owner, member, officer, director, associate, partner, or in any other position with
management or control of a licensee as follows:

21 (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.

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

23 (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,
24 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

25 ...
26 21. Section 4333 of the Code states, in pertinent part:

27 (a) All prescriptions filled by a pharmacy and all other records required by Section 4081
shall be maintained on the premises and available for inspection by authorized officers of the law
for a period of at least three years. In cases where the pharmacy discontinues business, these
28 records shall be maintained in a board-licensed facility for at least three years.

1 (b) Any person who willfully fails to comply with subdivision (a) is guilty of a
2 misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two
3 hundred dollars (\$200). Any person convicted of a second or subsequent offense shall be
punished by a fine of not less than two hundred dollars (\$200) and not more than four hundred
dollars (\$400).

...

4 **REGULATORY PROVISIONS**

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

6 (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.

7 (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.

...

8 23. California Code of Regulations, title 16, section 1714, states, in pertinent part:

...

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

...

12 24. California Code of Regulations, title 16, section 1718, states:

13 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions
14 Code shall be considered to include complete accountability for all dangerous drugs handled by
every licensee enumerated in Sections 4081 and 4332.

15 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.

16 **COST RECOVERY**

17 25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 **DEFINITIONS**

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

27 27. "Inflammacin" (generic name—Diclofenac/capsaicin) is categorized as a dangerous
28 drug pursuant to Code section 4022 and is used to treat osteoarthritis.

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

29. “Meabolic” is a dietary supplement.

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

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

FACTUAL ALLEGATIONS

32. At all times relevant to the allegations contained herein, Respondent Khan was the pharmacist-in-charge of Kare Foods Inc., dba Studio Pharmacy, Pharmacy Permit No. PHY 51656 (Studio Pharmacy). Respondent Khan was the pharmacist-in-charge of Excel Care from on or about September 12, 2016 to on or about June 4, 2018.

33. On or about April 12, 2017, the Board received a complaint from counsel for University of California (UC) alleging that Excel Care, Respondent Khan, and Studio Pharmacy had engaged in a billing fraud scheme. The complaint alleged that the scheme aimed to fraudulently obtain student health insurance information from UC students which was then used to bill fraudulent prescriptions in the students' names. Most of the medications at issue were expensive prescription-grade pain creams usually prescribed to elderly patients to treat arthritis. The students were recruited through means such as Facebook ads that offered cash payments to participate in sham clinical trials.

34. The UC complaint further alleged that participants in the scheme had attempted to subvert fraud reduction measures. For instance, on or about April 18, 2017, the UC Student Health Insurance Plan (UCSHIP) identified podiatrist Henry Rich Tseng as having been involved in the fraud and blocked him as a prescriber. On that same day, Excel Care attempted to fill three prescriptions from Dr. Tseng, but those claims were denied on the UCSHIP electronic system, which indicated that the prescriber had been blocked. After those three claims were denied, Excel Care on the same day billed over 600 prescriptions purportedly written by Dr. Tseng on April 12,

1 2017, just days before the block went into effect. The 600 prescriptions were for three
2 medications: Inflammation Reduction PA (\$2,800 per prescription), Mebolic (\$1,500 per
3 prescription), and Xelital (\$3,900 per prescription) and resulted in \$1.77 million in additional
4 claims paid by UCSHIP.

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

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

16 37. At approximately 9:45 AM, Inspector Bayley called Respondent Khan. Inspector
17 Bayley asked told Respondent Khan that she needed to inspect Excel Care. Respondent Khan
18 stated that she was planning to be there at 11:00 AM when Excel Care opened.

19 38. At approximately 10:22 AM, Respondent Khan arrived at Studio Pharmacy, where
20 Board Inspectors Brandon Mutrux and Christopher Woo were conducting an inspection.
21 Respondent Khan informed the inspectors that there were Board inspectors at Excel Care.
22 Inspectors Mutrux and Woo told Respondent Khan they would expedite their inspection of Studio
23 Pharmacy on the condition that Respondent Khan would go to Excel Care to meet with Inspectors
24 Bayley and Delune.

25 39. At approximately 10:26 AM, Inspector Bayley received a call from Anthony Peraino,
26 the husband of Asli Peraino. Mr. Peraino stated that Excel Care had been closed for two to three
27 weeks because his regular pharmacist, RPH Al-Qazzaz, had left. Mr. Peraino stated that
28 Respondent Khan regularly visited the pharmacy two times per week. The inspectors told Mr.

1 Peraino that Respondent Khan had said she would be at the pharmacy at 11:00 AM. Mr. Peraino
2 stated that he would contact Respondent Khan. He called the inspectors back and stated that
3 Respondent Khan would not be able to come to Excel Care. Mr. Peraino stated that he would be
4 back in town the following day and that the inspectors could visit then.

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

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

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

16 43. Mr. Peraino declined to participate in an interview but stated that he and Respondent
17 Khan would help the inspectors collect records. Inspector Bayley asked Respondent Khan if the
18 electronic computer record was an accurate and complete record of the pharmacy. Respondent
19 Khan stated "yes." Inspector Bayley also asked Respondent Khan if all prescriptions were
20 scanned, and Respondent Khan said "yes."

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

24 45. During the inspection, Inspector Bayley asked Respondent Khan who else was
25 present at the pharmacy. Mr. Peraino questioned what Inspector Bayley meant and acted as if the
26 unidentified man had not been present. When specifically asked questioned about the man
27 Inspector Bayley had seen, Mr. Peraino claimed that the man was his brother. The inspectors did
28 not observe any physical resemblance between Mr. Peraino and the unidentified man. Inspector

1 Bayley explained that Respondent Khan should have known who was present at the pharmacy
2 because she was responsible for the security of the pharmacy, Respondent Khan did not answer.
3 Mr. Peraino refused to provide the man's name, and Respondent Khan failed to do so.

4 46. When asked about pharmacy staff members associated with Excel Care, Respondent
5 Khan and Mr. Peraino stated that Respondent Khan and Mr. Peraino were currently working at
6 the pharmacy. Mr. Peraino stated that RPH Al-Qazzaz had left the pharmacy on June 23, 2017
7 and that the pharmacy had been since closed.

8 47. Inspector Bayley asked Respondent Khan if she had found a temporary pharmacist to
9 work at Studio Pharmacy while Respondent Khan was assisting the inspection of Excel Care.
10 Respondent Khan stated that Studio Pharmacy was closed for the day.

11 48. During the six (6) hour inspection, Mr. Peraino was hostile, uncooperative, and
12 condescending to the inspectors. For instance, when Inspector Bayley asked about prescriptions
13 on a daily log showing they had been entered and billed on the day of the inspection, Mr. Peraino
14 became angry and accused the inspectors of asking too many questions and harassing him. When
15 the inspectors directed questions to Respondent Khan, Mr. Peraino answered first and did not
16 give Respondent Khan the opportunity to speak. Mr. Peraino did not give straight answers to
17 many of the inspectors' questions. Mr. Peraino repeatedly interrupted conversations between the
18 two inspectors and between the inspectors and Respondent Khan. Mr. Peraino also frequently
19 commented about matters not pertaining to the inspection. At approximately 4:00 PM, Mr.
20 Peraino suddenly told the inspectors that they must leave by 5:00 PM. Inspector Delune pointed
21 out that Excel Care's business hours were 11:00 AM to 7:00 PM. Mr. Peraino insisted that the
22 pharmacy would be closing at 5:00 PM. Mr. Peraino continued to comment and interrupt the
23 investigators as they attempted to finish the inspection.

24 49. During the inspection, the inspectors inspected the entire premises, including drawers,
25 wall cabinets, rooms, file, cabinets, and more. The inspectors noticed that Excel Care had a small
26 amount of inventory and asked Respondent Khan to conduct a stock on hand inventory for
27 selected medications. Respondent Khan completed the inventory portion of the form and left
28 blank the following fields: last Rx number, last inventory date, date and time last order delivered,

1 name of wholesalers, date and time of last drug loss, date and time DEA report filed, and date and
2 time police report filed. As the pharmacist-in-charge of Excel Care, it was odd that Respondent
3 Khan could not complete those sections. Respondent Khan's initials were on the pharmacy's
4 daily log for June 22, 2017, June 27, 2017, and July 11, 2017.

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

7 51. The Daily Log Report dated July 11, 2017 showed 2 prescriptions that were billed
8 and dispensed by Respondent Khan. The scanned copies of the original refill record showed
9 Respondent Khan dispensed the prescriptions on July 11, 2017.

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

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

19 54. Inspector Bayley selected seven new prescriptions on the July 12, 2017 Daily Log
20 Report and asked that Respondent Khan show her the scanned image of the original prescriptions.
21 None of the selected prescriptions showed images.

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

26 56. Inspector Bayley asked Respondent Khan for the original prescriptions for the
27 prescriptions processed during the inspection by Mendoza. Mr. Peraino answered that there were
28 no original prescriptions. Inspector Bayley asked how Mendoza could process new prescriptions

1 without the originals. Mr. Peraino stated that the entries on the Daily Log Report were new and
2 refill prescriptions. Respondent Khan did not answer the question.

3 57. Inspector Bayley asked if Mendoza was entering prescription information in
4 anticipation of new prescriptions. Mr. Peraino stated that the prescriptions were unbilled.
5 Inspector Bayley asked how Mendoza knew what information to enter into the computer without
6 original prescriptions or images of original prescriptions. Mr. Peraino claimed that the e-faxed
7 original prescriptions were in Excel Care's computer.

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

14 59. Inspector Bayley requested the original prescriptions shown on the Daily Log for July
15 12, 2017. On or about July 28, 2017, Respondent Khan sent records from Studio Pharmacy.
16 Respondent Khan included a letter purportedly explaining the July 12, 2017 prescriptions.

17 60. In her letter, Respondent Khan stated that she had included original prescriptions for
18 unbilled prescriptions. Respondent Khan stated that, when a prescription was received for a
19 compounded medication that was incomplete, not covered, not contracted to fill, or required a call
20 to a prescriber, a call would be made to the prescriber's officer, and, if desired, an alternative drug
21 was sometimes selected by the prescriber. Respondent Khan stated that, if a pharmacist was not
22 available to take a verbal approval over the phone for the alternative prescription, the prescription
23 was marked as a "pending script" using the software's tagging system to generate a report for
24 following up with the prescriber in receiving a faxed approval following the initial verbal choice.

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

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

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

11 64. Inspector Bayley requested the June 2017 Daily Log Reports from Respondent Khan.
12 The Daily Log Reports showed ninety-five (95) prescriptions were processed. Under the column
13 “CoPay Ins,” all ninety-five (95) prescriptions were billed to insurances with copayments of \$0 or
14 \$1.20. The most processed prescriptions were for Lidocaine 5% and Doxepin 5%.

15 65. The June 22, 2017 Daily Log showed three (3) new prescriptions written were billed
16 for Lidocaine 5% and Doxepin 5% by “FK” and “RU.” Mr. Peraino identified “RU” as Ricardo
17 Urizar (Urizar), an individual who worked at Studio Pharmacy. A Board inspection report of
18 Studio Pharmacy also identified Urizar as working there.

19 66. The June 27, 2017 Daily Log showed forty-three (43) refill prescriptions were billed
20 for Lidocaine 5% and Doxepin 5% by “FK” and “RU.” All prescriptions were processed between
21 3:13 PM and 4:42 PM.

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

1 68. In at least one instance, Excel Care sent a prescription to an address that had a
2 previous prescription delivery returned. When Inspector Bayley asked Mr. Peraino why the
3 prescription was sent a second time to an undeliverable address, Mr. Peraino did not respond.

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

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

19 71. An examination of the prescriptions for lidocaine ointment 5% showed that the titles
20 of the prescriptions were “Prescription Request.” A fax number was listed, but there was no
21 indication that prescribers faxed the prescriptions to Excel Care. All prescription orders showed
22 refills. Most of the initials for the dispensing pharmacist were “FK.” Prescriptions without
23 “FILED” stamps showed handwritten pharmacist initials of “AA.”

24 72. Inspector Bayley performed an audit of lidocaine 5% ointment 30 gram and
25 doxepin CL 5% cream 45 gram at Excel Care for the period of September 1, 2016 through July
26 12, 2017. The audit revealed the following significant discrepancies, which supported the
27 allegations of billing fraud committed by Excel Care:

28 ///

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

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

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

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

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

1 77. Respondent Khan appeared with a phone in hand and advised the pharmacy staff
2 members not to answer any questions. Inspector Bayley saw Respondent Khan and Mendoza
3 walk out together. Inspector Bayley waited for them, but they did not return. Inspector Bayley
4 walked out to look for Mendoza and saw Respondent Khan and Mendoza talking and standing
5 around the corner of the pharmacy. Inspector Bayley asked Respondent Khan and Mendoza to
6 come in. After Mendoza returned, Inspector Bayley saw Mendoza grabbing her purse. Inspector
7 Bayley asked if Mendoza was leaving, and Mendoza acknowledged that she was. Inspector
8 Bayley asked if and when Mendoza would be returning, and Mendoza stated that she would
9 return but did not know when.

10 78. Inspector Bayley asked who could generate reports from the pharmacy computer.
11 Respondent Khan stated that she could and sat on Mendoza's chair. Inspector Delune asked
12 Respondent Khan to show her how Excel Care received e-faxed prescriptions. Inspector Bayley
13 saw a file named "Excel Care" on the computer screen. Respondent Khan opened a login for
14 Faxage and purportedly tried to enter the password several times. Respondent Khan claimed that
15 her password was not working. It became clear that Respondent Khan would not show or provide
16 any records related to Excel Care and had intentionally removed Mendoza from the pharmacy.
17 As the duty pharmacist and pharmacist-in-charge, it would not make sense for Respondent Khan
18 not to have access to view e-faxed prescriptions.

19 79. The inspectors tried to generate a report showing detailed transaction data for
20 processing each prescription such as date and time for data entry, billing, charges, Rx notes log
21 (for USPS tracking number), and prescription information. Respondent Khan called Micro
22 Merchant and said the report would take three to four days. The inspectors asked Respondent
23 Khan to request the report while the inspectors were present.

24 80. Towards the end of the inspection of Studio Pharmacy, the inspectors asked why
25 Respondent Khan was not able to access the Faxage account for Excel Care. Mr. Tabakian, the
26 owner of Studio Pharmacy, was present, and Respondent Khan maintained eye contact with him
27 whenever she spoke. Respondent Khan stated that she could access the account from the
28 computer at Excel Care since the Faxage account was set up as an auto log-in which did not

1 require a password but that she could not do so from Studio Pharmacy. Inspector Bayley asked
2 Respondent Khan whether she meant the computer in the locked pharmacy area of Excel Care or
3 the other computer in the office. Respondent Khan stated she could log in from both computers.
4 Respondent Khan had not provided this information during the July 2017 inspection, and she and
5 Mr. Peraino had acted as if the computer in the office was the only one that could log in to the
6 Faxage account. Additionally, Respondent Khan did not offer to correct Mr. Peraino when he
7 claimed he did not have the password for the Faxage account.

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

17 82. Inspector Bayley asked Respondent Khan if Excel Care and Studio Pharmacy shared
18 a common electronic file. Respondent Khan agreed that they did, but she repeated that no one
19 from Studio Pharmacy had computer access for Excel Care. According to Respondent Khan and
20 Mr. Tabakian, none of the staff members at Studio Pharmacy worked for Excel Care except for
21 Respondent Khan and Mr. Peraino. However, Excel Care's Daily Logs between approximately
22 June 1, 2017 and July 12, 2017 showed the initials "DM" and "RU" under "Tech" for pharmacy
23 technician. "DM" were Mendoza's initials, and "RU" were Urizar's initials.

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

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

11 85. During the investigation, Inspector Bayley reviewed wholesalers' invoices and proof
12 of delivery sheets. She found three delivery addresses used for Excel Care: 5272 Francis St. in
13 Chino, California, 5272 Francis St. in Alta Loma, California, and Francis Animal Hospital
14 located at 5284 Francis Ave. in Chino, California. Excel Care's premises were located at 5272
15 Francis St. in Chino, California. The location of 5284 Francis Avenue in Chino belonged to
16 Francis Animal Hospital. Documentation showed that dangerous drugs had been delivered to
17 Francis Animal Hospital on behalf of Excel Care on or about the following dates: November 9,
18 2016, April 13, 2017, and June 20, 2017. In addition, on at least two occasions, persons whose
19 initials Respondent Khan did not recognize had signed on behalf of Excel Care for dangerous
20 drugs that were addressed to 5272 Francis St in Alta Loma.

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

26 87. On or about August 9, 2017, the inspectors interviewed RPH Al-Qazzaz. He stated
27 that he had worked for Excel Care from approximately January 30, 2017 to June 16, 2017. RPH
28 Al-Qazzaz stated that Respondent Khan and Mr. Peraino knew he had just obtained his

1 pharmacist license. RPH Al-Qazzaz stated that Respondent Khan visited Excel Care about two to
2 three times per month. Mr. Peraino visited Excel Care once a week and did so with the owner of
3 Studio Pharmacy about half of the time.

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

9 89. RPH Al-Qazzaz stated that he did not receive access to the faxed prescriptions.
10 Mendoza entered prescription data and billed prescriptions from Studio Pharmacy for Excel Care.
11 Respondent Khan or Mr. Peraino brought copies of prescriptions to Excel Care. Respondent
12 Khan ordered drugs from wholesalers. When drugs were delivered, RPH Al-Qazzaz filled the
13 prescriptions and used the copies of "faxed" prescriptions as the originals. RPH Al-Qazzaz
14 always wrote his initials on the prescription stickers on the back of prescriptions he dispensed.
15 When prescriptions were filled, RPH Al-Qazzaz would call Respondent Khan, who would send
16 someone to ship the prescriptions.

17 90. RPH Al-Qazzaz typically reviewed daily logs to determine if there were prescriptions
18 to be filled. In April of 2017, RPH Al-Qazzaz saw prescriptions to be filled, and Mr. Peraino
19 brought copies of prescriptions. In about two to three days, medications were ready to deliver,
20 but RPH Al-Qazzaz was told to return the medications since the claims were reversed. RPH Al-
21 Qazzaz was asked to file the copies of the prescriptions but was not told about the UC complaint.

22 91. RPH Al-Qazzaz related that Respondent Khan had visited the pharmacy in March of
23 2017 and told RPH Al-Qazzaz that Excel Care would start compounding creams. Respondent
24 Khan and two technicians worked on the compounding, but, after two weeks, Respondent Khan
25 stated that Excel Care would not compound anymore.

26 92. On or about August 24, 2017, Inspector Bayley interviewed Registered Pharmacist
27 Mehul Parikh (RPH Parikh). RPH Parikh stated that he worked for Excel Care from
28 approximately December 16, 2016 to January 27, 2017 and that it was his first job after becoming

1 a pharmacist. Respondent Khan and Mr Peraino hired RPH Parikh. RPH Parikh stated that he
2 saw Respondent Khan about two times and that Mr. Peraino was there three to five times per
3 week. Excel Care did not dispense any walk-in patient prescriptions. When RPH Parikh arrived
4 for work, he would find hard copies of prescriptions. Prescriptions were already typed and billed
5 on the computer. RPH Parikh printed prescription labels, scanned the hard copies, dispensed
6 prescriptions, and filed the hard copies. RPH Parikh always put his initials on the back of hard
7 copies after dispensing. RPH Parikh stated that he did not know prescriptions were faxed and had
8 never seen anyone printing original prescriptions at the pharmacy.

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

12 94. Respondent Schultz became pharmacist-in-charge of Excel Care on or about June 5,
13 2018.

14 95. On or about November 25, 2019, Excel Care filed a Discontinuance of Business with
15 the Board. Excel Care stated on the Discontinuance of Business that it would be discontinuing its
16 business as of November 19, 2019.

17 96. The Discontinuance of Business form contains a notice stating that “Pursuant to
18 sections 4081 and 4333 of the Business and Professions Code, all records of acquisition and
19 disposition of dangerous drugs, including prescription files, must be retained for three (3) years
20 from the date of making, in a board-licensed facility.” Immediately following this notice, Excel
21 Care stated that all records of acquisition and disposition of dangerous drugs would be maintained
22 at The Pharmacy Depot, 4948 W. Pico Blvd. Unit B, Los Angeles, CA 90019.

23 97. Both Respondent Schultz and Asli Peraino certified under penalty of perjury the truth
24 and accuracy of all statements, answers, and representations in the Discontinuance of Business
25 form, including all supplementary statements.

26 98. On or about October 19, 2020 and October 20, 2020, Board Inspector Christopher
27 Woo sent letters to Respondent Schultz and Asli Peraino in connection with an investigation
28 concerning Excel Care. Inspector Woo requested dispensing information for dangerous drugs for

1 the period commencing on or about November 5, 2017 and ending on or about November 5,
2 2019, as well as certain hard copy prescriptions and copies of prior authorization forms. On or
3 about October 22, 2020, Board Inspector Julia Krumer made additional requests to Respondent
4 Schultz and Asli Peraino for Excel Care's records relating to another investigation. Inspector
5 Krumer requested copies of certain prescriptions filled at Excel Care and for a patient prescription
6 profile. In response to the inspectors' requests, counsel for Excel Care stated that the original
7 records no longer existed because they had been scanned into a computer which was no longer
8 operational.

9 99. On or about November 17, 2020, Inspector Krumer visited the premises of the
10 Pharmacy Depot and requested the records of Excel Care. Inspector Krumer discovered there
11 were very few paper records and that the computer servers stored there were inaccessible. None
12 of the requested records were made available to Inspector Krumer. On or about December 1,
13 2020, Inspector Woo sent another request to counsel for Excel Care requesting that the records be
14 made available to him by December 4, 2020. Inspector Woo did not receive a response to his
15 request.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 100. Respondent Khan is subject to disciplinary action under Code section 4301,
19 subdivision (f), in that, while Respondent Khan was pharmacist-in-charge, Excel Care committed
20 acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption and knowingly made
21 or signed documents falsely representing the existence or nonexistence of a state of facts. While
22 Respondent Khan was pharmacist-in-charge, Excel Care billed fraudulent prescriptions to
23 patients' insurance that Excel Care had reason to know were not legitimately prescribed and that
24 at least some of the patients would not be using or did not receive. In addition, while Respondent
25 Khan was pharmacist-in-charge, Respondents also made false statements to Board inspectors and
26 provided fraudulent dispensing records. Complainant realleges paragraphs 32 through 99.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Designation of Pharmacist-in-Charge)

3 104. Respondent Khan 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 while Respondent Khan was pharmacist-in-charge of Excel Care,
6 she failed to exercise responsibility for the daily operation of the pharmacy. When questioned by
7 Board inspectors, Respondent Khan was unable to speak to pharmacy operations, lacked basic
8 information, provided inconsistent responses, and referred the Board inspectors to Mr. Peraino for
9 responses. Complainant realleges paragraphs 32 through 99.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 (Access to Dangerous Drugs and Devices)

12 105. Respondent Khan is subject to disciplinary action under Code section 4301,
13 subdivisions (j) and (o) in conjunction with Code section 4116, subdivision (a), in that, while
14 Respondent Khan was the pharmacist-in-charge, Excel Care permitted a person other than a
15 pharmacist, intern pharmacist, authorized officer of the law or person authorized to prescribe
16 access to areas in which dangerous drugs were stored, possessed, prepared, manufactured,
17 derived, compounded, dispensed, or repackaged. On or about July 12, 2017, an unidentified
18 person was present in the pharmacy, and Respondent Khan lacked knowledge of his identity.
19 Furthermore, as pharmacist-in-charge of Excel Care and of Studio Pharmacy, Respondent Khan
20 permitted Mendoza to enter data and bill for 72 prescriptions from Studio Pharmacy without a
21 pharmacist present. Complainant realleges paragraphs 32 through 99.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 (Operational Standards and Security and Current Inventory)

24 106. Respondent Khan is subject to disciplinary action under Code section 4301,
25 subdivision (o) in conjunction with California Code of Regulations, title 16, sections 1714,
26 subdivision (b), and 1718 in that, while Respondent Khan was pharmacist-in-charge, Excel Care
27 failed to maintain its facilities, space, fixtures, and equipment so drugs were safely and properly
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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 32 through 99.

EIGHTH CAUSE FOR DISCIPLINE

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

107. 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, 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, 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, Excel Care permitted unidentified persons to receive dangerous drugs at Excel Care's licensed premises. Complainant realleges paragraphs 32 through 99.

NINTH CAUSE FOR DISCIPLINE

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

108. Respondent Khan 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, while Respondent Khan was pharmacist-in-charge, Excel Care permitted Mendoza to enter data and bill 72 prescriptions from Studio Pharmacy without pharmacist supervision. Complainant realleges paragraphs 32 through 99.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 109. Respondent Schultz is subject to disciplinary action under Code section 4301,
4 subdivision (f), in that, while Respondent Schultz was pharmacist-in-charge, Excel Care
5 committed acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption and
6 knowingly made or signed documents falsely representing the existence or nonexistence of a state
7 of facts. While Respondent Schultz was pharmacist-in-charge, Excel Care made a false
8 certification that all records of acquisition and disposition of dangerous drugs would be
9 maintained at The Pharmacy Depot following Excel Care's discontinuance of business.
10 Respondent Schultz also personally signed this false certification under penalty of perjury.
11 Complainant realleges paragraphs 32 through 99.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

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

14 110. Respondent Schultz 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, while Respondent Schultz was pharmacist-in-charge, Excel
17 Care failed to retain records of the sale, acquisition, receipt, shipment, or disposition of dangerous
18 drugs for at least three years from the date of making and failed to provide dispensing-related
19 records requested by the Board investigator. Complainant realleges paragraphs 32 through 99.

20 **DISCIPLINE CONSIDERATIONS**

21 111. To determine the degree of discipline, if any, to be imposed on Respondent
22 Schultz, Complainant alleges that effective on or about December 9, 2020, in Board case number
23 6831, the Board publicly reprimanded Respondent Schultz. In a stipulated settlement, Respondent
24 Schultz agreed that, at hearing, Complainant could establish a factual basis for the charges in First
25 Amended Accusation number 6831, and Respondent gave up his right to contest those charges.
26 As pertinent to Respondent Schultz, First Amended Accusation number 6831 alleged that
27 Respondent Schultz was subject to disciplinary action for procurement of a license by
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misrepresentation, commission of dishonest acts, failure to notify the Board of the sale or transfer of dangerous drugs, failure to report the correct names of owners and officers, and operation of a pharmacy without submitting an application for a change in ownership.

PROHIBITIONS

112. Pursuant to Code section 4307, the revocation of Pharmacy Permit Number PHY 54610 issued to Excel Care for conduct that occurred while Anthony Peraino was a manager, administrator, owner, member, officer, director, associate, partner or other person with management or control of Excel Care and had knowledge of or knowingly participated in any of the conduct is grounds to prohibit Anthony Peraino from serving as manager, administrator, owner, members, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY 54610 is reinstated.

113. Pursuant to Code section 4307, the revocation of Pharmacy Permit Number PHY 54610 issued to Excel Care for conduct that occurred while Asli Peraino was a manager, administrator, owner, member, officer, director, associate, partner or other person with management or control of Excel Care and had knowledge of or knowingly participated in any of the conduct is grounds to prohibit Asli Peraino from serving as manager, administrator, owner, members, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY 54610 is reinstated.

114. Pursuant to Code section 4307, the revocation of Pharmacy Permit Number PHY 54610 issued to Excel Care for conduct that occurred while Respondent Khan was a manager, administrator, owner, member, officer, director, associate, partner or other person with management or control of Excel Care and had knowledge of or knowingly participated in any of the conduct is grounds to prohibit Respondent Khan from serving as manager, administrator, owner, members, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY 54610 is reinstated.

115. Pursuant to Code section 4307, the revocation of Pharmacy Permit Number PHY 54610 issued to Excel Care for conduct that occurred while Respondent Schultz was a manager, administrator, owner, member, officer, director, associate, partner or other person with

1 management or control of Excel Care and had knowledge of or knowingly participated in any of
2 the conduct is grounds to prohibit Respondent Schultz from serving as manager, administrator,
3 owner, members, officer, director, associate, or partner of a licensee until Pharmacy Permit
4 Number PHY 54610 is reinstated.

5 **PRAYER**

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

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

10 2. Revoking or suspending Pharmacist License Number RPH 20459, issued to Howard
11 Schultz;

12 3. Prohibiting Anthony Peraino from serving as a manager, administrator, owner,
13 member, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY
14 54610 issued to Excel Care Pharmacy, Inc. is reinstated;

15 4. Prohibiting Asli Peraino from serving as a manager, administrator, owner, member,
16 officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY 54610
17 issued to Excel Care Pharmacy, Inc. is reinstated;

18 5. Prohibiting Fauzia Riasat Khan from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY
20 54610 issued to Excel Care Pharmacy, Inc. is reinstated;

21 6. Prohibiting Howard Schultz from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee until Pharmacy Permit Number PHY
23 54610 issued to Excel Care Pharmacy, Inc. is reinstated;

24 7. Ordering Fauzia Riasat Khan and Howard Schultz to pay the Board of Pharmacy the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3; and,

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

DATED: 10/3/2021 _____

Signature on File

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

LA2019505296