

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. 6871

**FAMILY PHARMACY, LLC, DBA
FAMILY PHARMACY
31952 Del Obispo St., Unit 240
San Juan Capistrano, CA 92675**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Permit No. PHY 55277

Respondent.

FINDINGS OF FACT

1. On or about May 4, 2021, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 6871 against Family Pharmacy, LLC, dba Family Pharmacy (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 3, 2016, the Board issued Pharmacy Permit Number PHY 55277 to Family Pharmacy, LLC, dba Family Pharmacy (Respondent). Fathy Elsafty is the sole shareholder of Family Pharmacy, LLC. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and was cancelled on March 25, 2020.

///

1 3. This lapse in licensure, however, pursuant to Business and Professions Code section
2 4300.1, does not deprive the Board of its authority to institute or continue this disciplinary
3 proceeding.

4 4. On or about May 14, 2021, Respondent was served by Certified and First Class Mail
5 copies of the Accusation No. 6871, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
8 is required to be reported and maintained with the Board. Respondent's address of record was
9 and is: 31952 Del Obispo St., Unit 240, San Juan Capistrano, CA 92675.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
12 124.

13 6. Government Code section 11506, subdivision (c) states, in pertinent part:

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

19 7. The Board takes official notice of its records and the fact that Respondent failed to
20 file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore
21 waived their right to a hearing on the merits of Accusation No. 6871.

22 8. California Government Code section 11520, subdivision (a) states, in pertinent part:

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 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. 6871,

1 finds that the charges and allegations in Accusation No. 6871, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 10. The Board finds that the actual costs for Investigation and Enforcement are
4 \$48,971.50 as of June 3, 2021.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Family Pharmacy, LLC, dba
7 Family Pharmacy, and Fathy Elsafty is the sole shareholder of Family Pharmacy, LLC has
8 subjected its Pharmacy Permit Number PHY 55277 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under Code section 4040 in conjunction
14 with California Code of Regulations section 176, subdivision (a).

15 b. Respondent is subject to disciplinary action under Code section 4301 subdivision (f)
16 in that Respondent engaged in acts involving dishonesty, fraud, and deceit.

17 c. Respondent is subject to disciplinary action under Code section 4301 subdivision (n)
18 in that Respondent was disciplined by the Oregon Board.

19 d. Respondent is subject to disciplinary action under Code section 4301 subdivision (o)
20 for unprofessional conduct in that Respondent engaged in actions that violated or attempted to
21 violate, directly or indirectly, state laws and regulations established by the board or by any other
22 state or federal regulatory agency.

23 e. Respondent is subject to disciplinary action under Code section 4059.5 subdivision
24 (e) and under Code section 4301 subdivision (j), for selling and delivering dangerous drugs into
25 other states, not in compliance with the laws of the state where the dangerous drugs are sold or
26 delivered.

27 ///

28 ///

1 f. Respondent is subject to disciplinary action under Code section 4301 subdivisions (j)
2 and (o), in conjunction with Code of Federal Regulations, title 21, section 1304.11 for
3 unprofessional conduct in that Respondent failed to maintain accurate inventories and/or records
4 of acquisition and disposition.

5 g. Respondent is subject to disciplinary action under Code section 4301 subdivisions (j)
6 and (o), in conjunction with California Code of Regulations title 16, section 1717.3, in that
7 Respondent erroneously dispensed prescriptions pursuant to a preprinted multiple check-off
8 prescription.

9 **ORDER**

10 IT IS SO ORDERED that Pharmacy Permit No. PHY 55277, issued to Respondent Family
11 Pharmacy, LLC, dba Family Pharmacy, is revoked.

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

16 This Decision shall become effective at 5:00 p.m. on August 25, 2021.

17 It is so ORDERED on July 26, 2021.

18 

19 _____
20 Seung Oh
21 Board President
22 FOR THE BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS

22 82906662.DOCX
23 DOJ Matter ID:SD2019703042

24 Attachment:
25 Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 MARICHELLE TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
4 State Bar No. 203092
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9012
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6871

14 **FAMILY PHARMACY, LLC,**

15 **DBA FAMILY PHARMACY: FATHY**
16 **ELSAFTY, Owner**
17 **31952 Del Obispo St., Unit 240**
18 **San Juan Capistrano, CA 92675**

ACCUSATION

19 **Pharmacy Permit No. PHY 55277**

20 Respondents.

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

23 2. On or about November 3, 2016, the Board issued Pharmacy Permit Number PHY
24 55277 to Family Pharmacy, LLC, dba Family Pharmacy (Respondent). Fathy Elsafty is the sole
25 shareholder of Family Pharmacy, LLC. The Pharmacy Permit was in full force and effect at all
26 times relevant to the charges brought herein and was cancelled on March 25, 2020.

27 ///

28 ///

JURISDICTION

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

4. Section 4300 of the Code states:

(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 on 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.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. 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.

6. Section 4307 of the Code states:

(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,

1 partner, or any other person with management or control had knowledge of or
2 knowingly participated in any conduct for which the license was denied, revoked,
3 suspended, or placed on probation, shall be prohibited from serving as a manager,
4 administrator, owner, member, officer, director, associate, partner, or in any other
5 position with management or control of a licensee as follows:

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

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

11 (b) "Manager, administrator, owner, member, officer, director, associate, or partner,"
12 as used in this section and Section 4308, may refer to a pharmacist or to any other
13 person who serves in that capacity in or for a licensee.

14 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
15 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government
16 Code. However, no order may be issued in that case except as to a person who is named
17 in the caption, as to whom the pleading alleges the applicability of this section, and
18 where the person has been given notice of the proceeding as required by Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
20 The authority to proceed as provided by this subdivision shall be in addition to the
21 board's authority to proceed under Section 4339 or any other provision of law.

22 STATUTORY PROVISIONS

23 7. Section 4040 of the Code states:

24 (a) "Prescription" means an oral, written, or electronic transmission order that is both
25 of the following:

26 (1) Given individually for the person or persons for whom ordered that
27 includes all of the following:

28 (A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the
directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the
name, address, and telephone number of the prescriber, his or her license
classification, and his or her federal registry number, if a controlled
substance is prescribed.

(E) A legible, clear notice of the condition or purpose for which the
drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the
certified nurse-midwife, nurse practitioner, physician assistant, or
naturopathic doctor who issues a drug order pursuant to Section 2746.51 ,
2836.1 , 3502.1 , or 3640.5 , respectively, or the pharmacist who issues a

drug order pursuant to Section 4052.1 , 4052.2 , or 4052.6 .

1
2 (2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or
3 naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant
4 to Section 2746.51 , 2836.1 , 3502.1 , or 3460.5, by a certified nurse-midwife, nurse
5 practitioner, physician assistant, or naturopathic doctor licensed in this state, or
6 pursuant to Section 4052.1 , 4052.2 , or 4052.6 by a pharmacist licensed in this
7 state.

8 (b) Notwithstanding subdivision (a), a written order of the prescriber for a
9 dangerous drug, except for any Schedule II controlled substance, that contains at
10 least the name and signature of the prescriber, the name and address of the patient in
11 a manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the
12 Health and Safety Code , the name and quantity of the drug prescribed, directions
13 for use, and the date of issue may be treated as a prescription by the dispensing
14 pharmacist as long as any additional information required by subdivision (a) is
15 readily retrievable in the pharmacy. In the event of a conflict between this
16 subdivision and Section 11164 of the Health and Safety Code , Section 11164 of the
17 Health and Safety Code shall prevail.

18 (c) “Electronic transmission prescription” includes both image and data
19 prescriptions. “Electronic image transmission prescription” means any prescription
20 order for which a facsimile of the order is received by a pharmacy from a licensed
21 prescriber. “Electronic data transmission prescription” means any prescription
22 order, other than an electronic image transmission prescription, that is electronically
23 transmitted from a licensed prescriber to a pharmacy.

24 (d) The use of commonly used abbreviations shall not invalidate an otherwise valid
25 prescription.

26 (e) Nothing in the amendments made to this section (formerly Section 4036) at the
27 1969 Regular Session of the Legislature shall be construed as expanding or limiting
28 the right that a chiropractor, while acting within the scope of his or her license, may
have to prescribe a device.

8. Section 4059.5 of the Code states:

...

20 (e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered
21 to a person outside this state, whether foreign or domestic, unless the transferor,
22 seller, or deliverer does so in compliance with the laws of this state and of the United
23 States and of the state or country to which the dangerous drugs or dangerous devices
24 are to be transferred, sold, or delivered. Compliance with the laws of this state and the
25 United States and of the state or country to which the dangerous drugs or dangerous
26 devices are to be delivered shall include, but not be limited to, determining that the
27 recipient of the dangerous drugs or dangerous devices is authorized by law to receive
28 the dangerous drugs or dangerous devices.

...

9. Section 4301 of the Code states:

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:

1 ...
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
3 deceit, or corruption, whether the act is committed in the course of relations as a
4 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

5 ...
6 (j) The violation of any of the statutes of this state, of any other state, or of
7 the United States regulating controlled substances and dangerous drugs.

8 ...
9 (n) The revocation, suspension, or other discipline by another state of a
10 license to practice pharmacy, operate a pharmacy, or do any other act for which a
11 license is required by this chapter that would be grounds for revocation, suspension,
12 or other discipline under this chapter. Any disciplinary action taken by the board
13 pursuant to this section shall be coterminous with action taken by another state,
14 except that the term of any discipline taken by the board may exceed that of another
15 state, consistent with the board's enforcement guidelines. The evidence of discipline
16 by another state is conclusive proof of unprofessional conduct.

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

22 ...
23 10. California Health and Safety Code section 11165, states:
24 ...
25 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
26 substance, as defined in the controlled substances schedules in federal law and
27 regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
28 Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or
 other dispenser shall report the following information to the Department of Justice
 as soon as reasonably possible, but not more than seven days after the date a
 controlled substance is dispensed, in a format specified by the Department of
 Justice:

 (1) Full name, address, and, if available, telephone number of the ultimate
 user or research subject, or contact information as determined by the Secretary of
 the United States Department of Health and Human Services, and the gender, and
 date of birth of the ultimate user.

 (2) The prescriber's category of licensure, license number, national provider
 identifier (NPI) number, the federal controlled substance registration number, and
 the state medical license number of any prescriber using the federal controlled
 substance registration number of a government-exempt facility, if provided.

 (3) Pharmacy prescription number, license number, NPI number, and federal
 controlled substance registration number.

1 (4) National Drug Code (NDC) number of the controlled substance
dispensed.

2 (5) Quantity of the controlled substance dispensed.

3 (6) International Statistical Classification of Diseases, 9th revision (ICD-9)
4 or 10th revision (ICD-10) Code, if available.

5 (7) Number of refills ordered.

6 (8) Whether the drug was dispensed as a refill of a prescription or as a first-
time request.

7 (9) Date of origin of the prescription.

8 (10) Date of dispensing of the prescription.

9 (11) The serial number for the corresponding prescription form, if
10 applicable.

11 ...

12 **REGULATORY PROVISIONS**

13 11. California Code of Regulations, title 16, section 1709.1 states:

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

16 ...

17 12. California Code of Regulations, title 16, section 1717.3, states:

18 ...

19 (b) A person may dispense a dangerous drug, that is not a controlled substance,
20 pursuant to a preprinted multiple checkoff prescription blank and may dispense
more than one dangerous drug, that is not a controlled substance, pursuant to such a
21 blank if the prescriber has indicated on the blank the number of dangerous drugs he
or she has prescribed.

22 13. California Code of Regulations, title 16, section 1761, states:

23 (a) No pharmacist shall compound or dispense any prescription which contains any
24 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon
receipt of any such prescription, the pharmacist shall contact the prescriber to obtain
25 the information needed to validate the prescription.

26 ...

27 (b) A person may dispense a dangerous drug, that is not a controlled substance,
pursuant to a preprinted multiple checkoff prescription blank and may dispense
28 more than one dangerous drug, that is not a controlled substance, pursuant to such a
blank if the prescriber has indicated on the blank the number of dangerous drugs he

1 or she has prescribed.

2 ...

3 **FEDERAL REGULATIONS**

4 14. Code of Federal Regulations section 1304.11, states:

5 (a) General requirements. Each inventory shall contain a complete and accurate
6 record of all controlled substances on hand on the date the inventory is taken, and
7 shall be maintained in written, typewritten, or printed form at the registered
8 location. An inventory taken by use of an oral recording device must be promptly
9 transcribed. Controlled substances shall be deemed to be “on hand” if they are in the
10 possession of or under the control of the registrant, including substances returned by
11 a customer, ordered by a customer but not yet invoiced, stored in a warehouse on
12 behalf of the registrant, and substances in the possession of employees of the
13 registrant and intended for distribution as complimentary samples. A separate
14 inventory shall be made for each registered location and each independent activity
15 registered, except as provided in paragraph (e)(4) of this section. In the event
16 controlled substances in the possession or under the control of the registrant are
17 stored at a location for which he/she is not registered, the substances shall be
18 included in the inventory of the registered location to which they are subject to
19 control or to which the person possessing the substance is responsible. The
20 inventory may be taken either as of opening of business or as of the close of
21 business on the inventory date and it shall be indicated on the inventory.

22 **COST RECOVERY**

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

29 **FACTUAL ALLEGATIONS**

30 16. Respondent is a mail order pharmacy licensed in twenty-three states and is located in
31 San Juan Capistrano, California. Respondent primarily dispenses diabetic testing supplies and
32 topical creams. Respondent receives fax prescriptions through a pharmacy software program,
33 Abacus Rx Inc. primarily from FortBend Rx Pharmacy and Primary Care Pharmacy, both located
34 in Texas, and possibly other unidentified pharmacies. Upon receipt of faxed prescriptions, or
35 shortly thereafter, Respondent processes and mails the prescriptions to patients.

36 ///

1 **Complaint No. CI 2017 78509 Received January 10, 2018**

2 17. On or about January 10, 2018, the Board received a complaint from prescriber Dr.
3 SC, located in Florida, stating that Respondent sent a request for authorization of a prescription
4 on behalf of a new patient. Dr. SC confirmed that the request was not for a patient under her care.
5 Dr. SC believed her office was targeted because the office had a high volume of patients.

6 18. Thereafter, on or about April 5, 2018, Board Inspector SD conducted an inspection of
7 the pharmacy premises. As part of the investigation, Board Inspector SD interviewed Pharmacist
8 in Charge (PIC) AW. When asked for documentation that pharmacy staff in San Juan Capistrano
9 verified patient prescription requests, PIC AW explained that prior to fulfilling prescriptions for
10 patients located in another state, pharmacy staff ensured that Respondent was licensed in that
11 state. Board Inspector SD obtained several copies of prescriptions and asked PIC AW for written
12 explanations as to various policies employed by Respondent in verifying and dispensing
13 prescriptions.

14 19. On or about May 22, 2018, Board Inspector SD interviewed Respondent's former
15 pharmacy technician, CE. CE stated that many patients complained that they received drugs
16 without submitting a prescription to Respondent. CE stated that Texas corporate staff monitored
17 all calls received by Respondent and coached staff in California on how to respond to doctors.
18 CE stated that corporate staff in Texas informed Respondent's staff not to reverse insurance
19 claims for returned items.

20 20. Board Inspector SD contacted patients listed in the prescriptions obtained during the
21 inspection to determine if they received prescriptions erroneously. Board Inspector SD reviewed
22 correspondence from the following patients:

23 Patient BG stated that she did not request the prescription and that BG's physician had
24 not authorized the prescription. BG returned the prescription.

25 Patient BN recalled that a representative from Respondent's office telephoned to state
26 her treating physician authorized a prescription and sent multiple refills without BN
27 requesting refills.

28

1 Patient ED received several prescriptions from Respondent but never had any contact
2 with Respondent.

3 Patient RA received several refill prescriptions from Respondent. RA's treating
4 physician's office stated that their office received a request from the pharmacy to fill
5 the prescription on RA's behalf. The prescriptions were for diabetic testing supplies
6 when the patient did not have diabetes. The patient did not have the medical
7 conditions to warrant such supplies.

8 21. Board Inspector SD reviewed prescription labels obtained during the inspection and
9 determined that Respondent routinely marked up the cost of prescriptions. For example,
10 Respondent charged a patient \$849.14 for the prescription Calcipotriene 0.005% 120 gm when
11 the cost to the pharmacy was \$140.00. Respondent charged \$1,204.23 for lidocaine 5% 141.8
12 gm. The cost to the pharmacy was \$48.00. On or about September 5, 2018, Board Inspector SD
13 interviewed PIC AW about the average prescriptions Respondent dispensed for the period April
14 to July. PIC AW approximated that the pharmacy processed an average of 100 prescriptions per
15 day, five days a week for an approximate total of 6,000 prescriptions.

16 **Complaint No. CI 2018 82631 Received December 13, 2018.**

17 22. On or about December 13, 2018, the Board received a complaint from Dr. JS, located
18 in Baltimore, Maryland. Dr. JS stated that Respondent faxed multiple requests daily for diabetic
19 supplies and other medications for approximately fifteen patients that did not have diabetes. Dr.
20 JS requested that Respondent cease sending prescription authorization requests without success.
21 Dr. JS provided numerous refill requests submitted by Respondent for two patients, CD and WB
22 during business and nonbusiness hours. Board Inspector SD contacted patient CD by telephone.
23 Patient CD confirmed he was not diabetic and that he never requested any prescriptions from
24 Respondent. Board Inspector SD spoke with WB's daughter who confirmed that WB was not
25 diabetic and did not request prescriptions from Respondent.

26 **Complaint No. CI 2017 79531 Received April 4, 2018.**

27 23. On or about April 4, 2018, the Board received a complaint from KP, administrator for
28 Siskin Spine and Rehabilitation Specialists located in Chattanooga, Tennessee. The complaint

1 stated that Respondent harassed KP's office by sending multiple fax requests for prescription
2 authorizations. The office requested Respondent to stop, but Respondent continued to send
3 multiple faxes daily for diabetic supplies. KP confirmed that the office did not manage diabetic
4 care patients or specialize as primary care physicians. By June 26, 2018, KP's office averaged
5 10-20 fax requests on behalf of unknown patients for prescriptions from Respondent daily.

6 24. On July 11, 2018, Board Inspector SD returned to Respondent's pharmacy. PIC AW
7 informed Board Inspector SD that customer service in Texas telephoned patients to confirm
8 delivery prior to Respondent dispensing the prescription. The staff then notated confirmation in
9 the computer program. PIC AW approximated that Respondent received seven returned items per
10 day. Board Inspector SD located four boxes of returned prescriptions. Board Inspector SD
11 requested PIC AW provide a statement explaining the return process, a copy of several
12 prescriptions requested by Respondent, the plan of action for the four boxes of returned
13 prescriptions, and other business process explanations. PIC AW provided five of the requested
14 prescriptions. The prescriptions illustrated mark up costs of 590.51% to 2,863% of the drug cost
15 to the pharmacy. On or about August 22, 2018, PIC AW contacted Board Inspector SD and
16 stated Respondent terminated his employment.

17 25. Board Inspector SD evaluated a sampling of the returned items. SD spoke with
18 patients MJ, SR, and DO. All patients stated they did not request Respondent fill a prescription,
19 did not have any contact with Respondent regarding delivery confirmation, and had returned the
20 medication. Patient DO stated that Respondent charged over \$600.00 for a prescription that went
21 towards his Medicare coverage.

22 26. Board Inspector SD received Respondent's dispensing report for the period January 1,
23 2018, through July 31, 2018. Respondent dispensed approximately 15,000 prescriptions during
24 this period. Respondent only dispensed diabetic testing supplies and topical creams. Board
25 Inspector SD randomly contacted five patients from the dispensing report. The patients, or their
26 prescribers, stated that they did not request prescriptions from Respondent but did receive
27 shipments from Respondent. On or about October 3, 2018, Board Inspector SD issued written
28 notices of non-compliance based upon her investigation and the complaints received.

1 **Complaint No. CI 2017 80186 Received May 18, 2018.**

2 27. On or about May 18, 2018, the Board received a complaint from Practice Manager ST
3 of Johnson Family Medicine located in Crossville, Tennessee. ST stated that their office received
4 multiple prescription requests daily from Respondent. ST stated that the patients did not request
5 the supplies from Respondent but that Respondent continued to send two to three requests per day
6 for the same patients. The office received approximately twenty-five requests marked as urgent
7 between May 17, 2018, and June 13, 2018, for patient WH. Patient WH was not diabetic and had
8 not requested that Johnson Family Medicine authorize a prescription. The requests were sent
9 during business and nonbusiness hours. In addition, the office received approximately seven
10 requests for patient BB. Patient BB stated she receives Medicare. On or about February 23,
11 2018, BB received a delivery consisting of two large tubes of cream from Respondent with her
12 treating physician's information. BB thought this was odd, as she had not seen her physician in
13 February. BB received another prescription from Respondent and contacted Medicare to reverse
14 the charges.

15 **Complaint No. CI 2018 83196 Received February 7, 2019.**

16 28. On or about February 7, 2019, the Board received a complaint from JM with Humana
17 Insurance Company. JM provided copies of claims submitted by Respondent for patients that the
18 patient and prescriber denied requesting from Respondent. Board Inspector SD reviewed the
19 claims and determined that Respondent dispensed prescriptions in Georgia, Nevada,
20 Pennsylvania, and Virginia without obtaining a license to do so. Respondent dispensed
21 approximately 1,604 drugs in these states. Board Inspector SD contacted patients in these states
22 and each patient confirmed that they did not request Respondent fulfill any prescription on their
23 behalf.

24 **Complaint No. CI 2019 85977 Received October 14, 2019.**

25 29. On or about October 14, 2019, the Board received a complaint from the Oregon
26 Board of Pharmacy (Oregon Board). The Oregon Board filed a Notice of Proposed Civil Penalty:
27 Answer required alleging that Respondent provided pharmacy services and shipped prescription
28 drugs to patients in Oregon without a non-resident pharmacy permit. Respondent also requested

1 prescription requests for patients in Oregon without being licensed in the state. Respondent did
2 not respond to the Oregon Board. The Oregon Board issued a final order by default finding
3 Respondent engaged in unprofessional conduct for providing pharmacy services to residents in
4 Oregon without a drug outlet registration with the Oregon Board. The Order imposed a civil
5 penalty in the amount of \$20,000.00.

6 30. On or about November 11, 2019, Board Inspector SD contacted Respondent and
7 asked to speak with the Pharmacist on duty. Respondent spoke with customer representative, KJ.
8 KJ informed SD that the Pharmacist was not working. When questioned about why she was
9 working at a pharmacy without a Pharmacist, KJ replied the pharmacy was closed. Board
10 Inspector SD left her contact information and asked that the Pharmacist return her call. On or
11 about December 4, 2019, Board Inspector SD received a Declaration to the Board in response to
12 the Board's request signed by PIC AS1 and a sampling of patient prescriptions dispensed to
13 Oregon patients. PIC AS1 stated that prior to becoming PIC, Respondent filled and dispensed a
14 small volume of prescriptions to about 29 patients in Oregon from 2017, to early 2018. PIC AS1
15 also claimed that shipment to patients in Oregon was "not a common practice" of Respondent and
16 did not occur after she became PIC. Board Inspector SD reviewed the prescriptions provided and
17 determined that Respondent sent 34 patients prescriptions, for a total of 94 dispensed to patients
18 located in Oregon. On or about May 20, 2020, PIC AS1 stated in a separate Declaration that she
19 could not confirm which patient in Oregon had received a prescription, and that she was unable to
20 access the patient files because Respondent closed the San Juan Capistrano business as of March

21 **Complaint No. CI 2018 82511 Received November 30, 2018.**

22 31. On or about November 30, 2018, the Board received an online complaint from Dr.
23 OG, alleging that Distinguished Pharmacy, an unlicensed pharmacy in California, dispensed false
24 prescriptions to doctors for patients that did not require the prescriptions and that Distinguished
25 Pharmacy stole patient information. Board Inspector JF contacted Dr. OG's office and spoke
26 with office manager CM. CM stated that the office received multiple fax prescription requests
27 from Distinguished Pharmacy and that Respondent sent repeated similar fax prescription requests
28 for Patient KL. Patient KL complained to Dr. OG that she received unwanted prescriptions that

1 were subsequently billed to her insurance. CM provided copies of faxed documents received
2 from Distinguished Pharmacy that included a pre-formatted prescription containing Dr. OG's
3 information and containing pre-checked items for Patient KL. CM then produced faxed
4 documents received from Respondent marked as "urgent" that alleged Patient KL requested
5 Respondent fill these prescriptions.

6 32. On or about January 29, 2019, Board Inspector JF conducted an inspection of
7 Respondent Pharmacy. Board Inspector JF met with PIC AS2 and reviewed Respondent's active
8 drug stock shelves. Board Inspector JF inquired if Respondent dispensed any controlled
9 substances. PIC AS2 stated that the pharmacy only stocked one expired controlled substance,
10 Tramadol ER 100mg, acquired from the inventory purchase of another pharmacy in August 2017.
11 Board Inspector JF then reviewed Respondent's Biennial Controlled Substance Inventory Form
12 dated November 30, 2017. The form indicated that there were no controlled substances on the
13 premises. Tramadol ER 100mg should have been included on this form.

14 33. Board Inspector JF reviewed Respondent's controlled substance inventory dated
15 January 9, 2019, that documenting Tramadol was still in stock. Board Inspector JF asked PIC
16 AS2 if Respondent submitted weekly CURES reports reflecting zero activity/dispensing as
17 required to maintain their DEA permit and stock controlled substances. Board Inspector JF
18 confirmed that Respondent did not submit a weekly report related to the expired drugs on hand as
19 required. As part of the inspection, Board Inspector JF obtained copies of sample invoices from
20 various wholesalers, computer screen shots of the daily reports, excel spreadsheets for patient
21 medication and supplies, and the prescription profile and documents related to Patient KL prior to
22 completing the inspection.

23 34. On or about February 14, 2019, the Board received a total of five medium sized boxes
24 from Respondent containing printed prescription hardcopies of the same style of pre-formatted
25 prescriptions obtained during the inspection of Respondent's pharmacy. These pre-formatted
26 forms matched the same pre-formatted forms that Distinguished Pharmacy and Respondent
27 submitted to Dr. OG on behalf of Patient KL. Board Inspector JF randomly selected five
28 prescription hardcopies from each box and compared the prescriptions. An examination of the

1 data obtained from the excel spreadsheet and the prescription hardcopies demonstrated that
2 Respondent associated with sister pharmacies including Distinguished Pharmacy and exchanged
3 or transferred prescriptions with a shared common electronic prescription file software program.
4 A review of Respondent's records revealed that Respondent filled and dispensed hundreds of
5 uncertain or erroneous preprinted prescription forms, with multiple check offs, that did not
6 indicate the number of prescriptions authorized by the prescriber from multiple physicians around
7 the country. These prescriptions specifically targeted diabetic testing supplies and topical creams
8 and ointments for patients, including for Patient KL.

9 **Complaint No. CI 2019 86330 Received November 13, 2019.**

10 35. On or about November 13, 2019, the Board received a complaint from LH stating that
11 Respondent submitted approximately eight (8) prescription requests on behalf of Patient ED for
12 medication that ED did not require. Dr. JH received and inadvertently approved these
13 prescriptions on behalf of ED. Board Inspector SD spoke with ED and confirmed that ED did not
14 request any prescriptions from Respondent, that she received several prescriptions in the mail
15 which she did not request or order, and that no pharmacy called to confirm delivery of
16 prescriptions. Board Inspector SD issued written notices of non-compliance to PIC AW, PIC
17 MM, and PIC AS2 for dispensing erroneous and uncertain prescriptions to ED while employed by
18 Respondent. PIC AW responded that he had no knowledge of prescription requests sent to Dr. JH
19 on behalf of ED, did not send a prescription request on behalf of ED, and did not send any
20 prescription requests to prescribers not requested by ED. PIC AS2 responded that she was not
21 aware of prescription requests sent to Dr. JH, did not know ED, and did not communicate with
22 any person regarding the prescriptions requested on ED's behalf.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Dispensing Prescriptions Containing Significant Error, Omission, Irregularity,**
25 **Uncertainty, Ambiguity, or Alterations)**

26 36. Respondent is subject to disciplinary action under Code section 4040 in conjunction
27 with California Code of Regulations section 1761 (a) as more fully set forth in paragraphs 16
28 through 35 which are incorporated by reference as if fully set forth herein

1 a) Dispensing prescriptions pursuant to faxed or transferred prescriptions without
2 contacting the prescriber directly.

3 b) Dispensing prescriptions without verifying or validating any prescriptions after receiving
4 prescriptions from the prescriber to validate the prescription.

5 c) Dispensing prescriptions across the country containing erroneous and uncertain
6 information.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct- Dishonesty, Fraud, and Deceit)**

9 37. Respondent is subject to disciplinary action under Code section 4301 subdivision (f)
10 in that Respondent engaged in acts involving dishonesty, fraud, and deceit as more fully set forth
11 in paragraphs 16 through 35, which are incorporated by reference as if fully set forth herein.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct- Out of State Discipline)**

14 38. Respondent is subject to disciplinary action under Code section 4301 subdivision (n)
15 in that Respondent was disciplined by the Oregon Board as more fully set forth in paragraphs 29
16 through 30, which are incorporated by reference as if fully set forth herein.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct -State Laws Governing Pharmacies)**

19 39. Respondent is subject to disciplinary action under Code section 4301 subdivision (o)
20 for unprofessional conduct in that Respondent engaged in actions that violated or attempted to
21 violate, directly or indirectly, state laws and regulations established by the board or by any other
22 state or federal regulatory agency, as more fully set forth in paragraphs 16 through 35, which are
23 incorporated by reference as if fully set forth herein.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Non-Resident Pharmacy Permit)**

26 40. Respondent is subject to disciplinary action under Code section 4059.5 subdivision
27 (e) for selling and delivering dangerous drugs into another state not in compliance with the laws
28 of the state where the dangerous drugs are sold or delivered, and under Code section 4301

1 subdivision (j) as it relates to the following Codes for dispensing prescriptions in states where
2 Respondent was not licensed as more fully set forth in paragraphs 16 through 35, which are
3 incorporated by reference as if fully set forth herein:

4 (a) Nevada Revised Statutes section 639.23288 subdivision (1)(b);

5 (b) Pennsylvania Pharmacy Act 699 of 1961 Section 4.1 subdivision (d);

6 (c) Official Code of Georgia section 26-4-80 (a);

7 (d) Oregon Administrative Rule sections 855-006-0020 (f) and (j), 855-041-1060 (2)
8 and Oregon Revised Statute (A); and

9 (e) Code of Virginia Drug Control Act law section 54.1-3434.1 subdivision (A).

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Failure to Maintain Accurate Current Inventory and**
12 **Records of Acquisition and Disposition)**

13 41. Respondent is subject to disciplinary action under Code section 4301 subdivisions (j)
14 and (o), in conjunction with Code of Federal Regulations, title 21, section 1304.11 for
15 unprofessional conduct in that Respondent failed to maintain accurate inventories and/or records
16 of acquisition and disposition, as more fully set forth in paragraphs 31 through 34, which are
17 incorporated by reference as if fully set forth herein.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct- Dispensing Controlled Substance Pursuant to a Preprinted**
20 **Multiple Check-Off Prescription Blank)**

21 42. Respondent is subject to disciplinary action under Code section 4301 subdivisions (j)
22 and (o), in conjunction with California Code of Regulations title 16, section 1717.3, in that
23 Respondent erroneously dispensed prescriptions pursuant to a preprinted multiple check-off
24 prescription as more fully set forth in paragraphs 31 through 34, which are incorporated by
25 reference as if fully set forth herein.

26 **OTHER MATTERS**

27 43. Pursuant to Section 4307, if Pharmacy Permit Number PHY 55277 issued to Family
28 Pharmacy LLC., dba Family Pharmacy, is suspended or revoked, Respondent Family Pharmacy

1 LLC shall be prohibited from serving as a manager, administrator, owner, member, officer,
2 director, associate, or partner of a licensee of the Board. If Pharmacy Permit Number PHY 55277
3 is placed on probation, Respondent Family Pharmacy LLC shall be prohibited from serving as a
4 manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the
5 Board for a period not to exceed five years.

6 44. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
7 PHY 55277, issued to Family Pharmacy Inc., dba Family Pharmacy, owner Fathy Elsafty shall be
8 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
9 or partner of a licensee for five years if Pharmacy Permit Number PHY 55277 is placed on
10 probation or until Pharmacy Permit Number PHY 55277 is reinstated if it is revoked.

11 **PRAYER**

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

14 1. Revoking or suspending Pharmacy Permit Number PHY 55277, issued to Family
15 Pharmacy, LLC, dba Family Pharmacy;

16 2. Prohibiting Family Pharmacy, Inc., dba Family Pharmacy from servicing as a
17 manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the
18 Board;

19 3. Prohibiting Fathy Elsafty from serving as a manager, administrator, owner, member,
20 officer, director, associate, or partner of a licensee of the Board;

21 4. Ordering Family Pharmacy, LLC, dba Family Pharmacy, to pay the Board of
22 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3; and,

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 5/4/2021

Signature on File

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

SD2019703042
82661927.docx