

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

In the Matter of the Accusation Against:

PHARMCORE INC., dba HALLANDALE PHARMACY,

GENNADY KRUPNIKAS, PRESIDENT/OWNER,

DAVID G. RABBANI, PHARMACIST-IN-CHARGE/OWNER,

MEDHAT METTIAS, PHARMACIST-IN-CHARGE,

Nonresident Pharmacy Permit No. NRP 962

Respondents.

Agency Case No. 7010

OAH No. 2021090621

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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 June 23, 2022.

It is so ORDERED on May 24, 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

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

In the Matter of the Accusation Against:

**PHARMCORE, INC., dba HALLANDALE PHARMACY;
GENNADY KRUPNIKAS, PRESIDENT/OWNER;
DAVID G. RABBANI, PHARMACIST-IN-CHARGE/OWNER;
MEDHAT METTIAS, PHARMACIST-IN-CHARGE, Respondents**

Agency Case No. 7010

OAH No. 2021090621¹

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 9 and 10, 2022, from Sacramento, California.

¹ This matter was consolidated with OAH Case No. 2021090632/Agency Case No. 7031 for hearing. Pursuant to complainant's request, OAH will issue a separate proposed decision for each matter.

Malissa N. Siemantel, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Ivan Petrzeka, attorney at law, represented Pharmcore, Inc., doing business as (dba) Hallandale Pharmacy (Pharmcore), David G. Rabbani, and Medhat Mettias, who were present at the hearing.

Gennady Krupnikas did not appear, his default was taken pursuant to Government Code section 11520, and the matter proceeded in his absence.

Evidence was received, the record was closed, and the matter was submitted for decision on March 10, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 8, 2008, Mr. Krupnikas, on behalf of Pharmcore, signed and thereafter submitted to the Board a nonresident pharmacy permit application (2008 application). On February 24, 2009, the Board issued Pharmcore Nonresident Pharmacy Permit Number NRP 962 (permit), with Mr. Krupnikas as President and Mr. Rabbani as Pharmacist-in-Charge (PIC). On July 1, 2014, Mr. Mettias replaced Mr. Rabbani as the PIC. The permit expired on February 1, 2021, and has not been renewed.²

² The Board has authority to discipline an expired permit. (Bus. & Prof. Code, § 118, subds. (b) & (c).)

2. On June 3, 2020, Pharmcore submitted a new nonresident pharmacy license application (2020 application) based on a change of ownership and change of location. Mr. Rabbani signed the 2020 application. With the 2020 application, Pharmcore submitted an Ownership Information form which stated, among other things, that Mr. Krupnikas and Mr. Rabbani each owned 50 percent of Pharmcore from June 4, 2004, through August 24, 2015, and that Mr. Rabbani owned 100 percent of Pharmcore from August 24, 2015 through the present.

3. On April 20, 2021, complainant filed an Accusation³ alleging Pharmcore failed to disclose Mr. Rabbani's ownership stake on its 2008 application and failed to disclose its 2015 change of ownership and 2018 change of address until its 2020 application. The Accusation further alleged Pharmcore's pharmacy license was disciplined in 10 other states between June 2016 and September 2020. Finally, the Accusation alleged Mr. Rabbani and Mr. Krupnikas were convicted of introducing misbranded drugs into interstate commerce in federal court in 2014 and 2015, respectively. Based on these allegations, the Accusation sought to discipline Pharmcore's permit for: (1) engaging in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption; (2) signing documents falsely representing facts; (3) receiving out-of-state discipline; (4) violating pharmacy laws and regulations; and (5) based on Mr. Krupnikas's and Mr. Rabbani's convictions. The Accusation also sought to prohibit all respondents from serving as a manager, administrator, owner, member,

³ At hearing, complainant moved to amend the Accusation by interlineation to correct typographical errors referencing internal paragraph numbers and a statutory subdivision. The amendments were non-substantive and respondents did not object, the motion was granted, and the Accusation was so amended.

officer, director, associate, or partner of a licensee for a specified time period. Pharmcore and Mr. Rabbani⁴ submitted a Notice of Defense, and this hearing followed.

2008 Application

4. Mr. Krupnikas signed the 2008 application under penalty of perjury. In doing so, he certified, among other things, that "no person other than the applicant or applicants has any direct or indirect interest in the applicant's or applicants' business to be conducted under the license(s) for which this application is made." Mr. Krupnikas was the only person who signed the 2008 application. Pharmcore's address in the 2008 application was in Hallandale, Florida.

5. Along with the 2008 application, Pharmcore submitted a Corporation Ownership Information form. In it, Mr. Krupnikas was listed as the only corporate officer or director, the section for identifying "Owners/Shareholders" was completed as "n/a," Mr. Krupnikas was the only name in the "Ownership" section, and the question "Does 10% or more of the ownership rest with any other entity?" was answered "No."

2020 Application

6. Mr. Rabbani signed the 2020 application under penalty of perjury. In doing so, he certified, among other things, both that he "ha[d] read the foregoing application and kn[ew] the contents thereof and that each and all statements therein made [we]re true," and that "all supplemental statements [we]re true and accurate."

7. Pharmcore's address in the 2020 application was in Fort Lauderdale, Florida. The 2020 application identified the anticipated change of ownership date and

⁴ Mr. Mettias did not submit a Notice of Defense but appeared at hearing.

anticipated move date as April 14, 2003. It also included two organizational charts, one reflecting the original structure and one reflecting the structure after the change of ownership. The original organizational chart identified Mr. Krupnikas as "100% shareholder." The updated organizational chart identified Mr. Rabbani as "100% shareholder."

8. Along with the 2020 application, Pharmcore submitted an Ownership Information form. The form stated, among other things, that Mr. Krupnikas owned 50 percent of Pharmcore from October 17, 2002, through August 24, 2015, that Mr. Rabbani owned 50 percent of Pharmcore starting on June 4, 2004, and that Mr. Rabbani owned 100 percent of Pharmcore from August 24, 2015, through the present.

Criminal Convictions

9. On November 24, 2014, in the U.S. District Court for the District of Rhode Island, case number 1:14-cr-00123-WES-LDA, Mr. Rabbani was convicted, on his guilty plea, of violating Title 21 United States Code sections 331(a) and 333(a)(1) (introduction of misbranded drugs into interstate commerce), a misdemeanor. The court sentenced Mr. Rabbani to three years of probation, subject to standard terms and a special term that required him to participate in substance abuse testing.

10. On April 20, 2015, in the U.S. District Court for the District of Rhode Island, case number 1:15-cr-00016-S-LDA, Mr. Krupnikas was convicted, on his guilty plea, of violating Title 21 United States Code sections 331(a) and 333(a)(1) (introduction of misbranded drugs into interstate commerce), a misdemeanor. The court sentenced Mr. Krupnikas to three years of probation, subject to standard terms and special terms that required him to participate in substance abuse testing and perform 1,000 hours of community service.

11. The circumstances underlying both convictions concerned Pharmacy Logistics, Inc., dba Ninth Street Pharmacy, located in Philadelphia, Pennsylvania, of which Mr. Rabbani and Mr. Krupnikas were co-owners and responsible corporate officers. Between March 2005 and September 2013, Ninth Street Pharmacy filled on-line orders for the pain relievers Ultram, Floricet, and their generic equivalents (tramadol and butalbital) without valid prescriptions.

Out-of-State Discipline

FLORIDA

12. Effective June 30, 2016, the Florida Board of Pharmacy (Florida Board) disciplined Mr. Krupnikas's Florida pharmacist license based on his 2015 criminal conviction and the acts underlying it. The Florida Board fined Mr. Krupnikas \$4,000 and placed his Florida pharmacist license on probation for two years, subject to terms and conditions.

OKLAHOMA

13. Effective November 29, 2017, the Oklahoma State Board of Pharmacy (Oklahoma Board) disciplined Pharmcore for 374 separate violations of Oklahoma statutes governing pharmacies and prescription drugs. Pursuant to Agreed Findings of Fact and Conclusions of Law, Pharmcore admitted it: (1) failed to renew its non-resident pharmacy license; (2) failed to send prescription records to the Oklahoma Prescription Drug Monitoring Program as required; (3) dispensed a prescription drug when it knew or should have known the prescription was invalid; (4) inappropriately solicited, dispensed, received or delivered a controlled dangerous substance through the mail; (5) failed to maintain an adequate patient record system; (6) failed to have a pharmacy manager responsible for all duties required by law; and (7) offered its

services to the public as a “pick-up station.” Based thereon, the Oklahoma Board fined Pharmcore \$37,400.

KENTUCKY

14. On October 10, 2018, pursuant to an Agreed Order, the Kentucky Board of Pharmacy fined Pharmcore \$1,100 for shipping 22 prescriptions for non-sterile compounded and sterile-compounded drugs into Kentucky between August 2017 and March 2018 without holding a Kentucky pharmacy permit.

ALASKA

15. Effective March 7, 2019, pursuant to a Consent Agreement, the Alaska Board of Pharmacy fined Pharmcore \$5,000 for shipping 138 prescriptions into Alaska between June 2016 and September 2018 despite having an expired out-of-state pharmacy license in Alaska.

LOUISIANA

16. Effective May 29, 2019, pursuant to a Consent Agreement, the Louisiana Board of Pharmacy fined Pharmcore \$10,000 for dispensing 65 prescriptions to Louisiana residents without a Louisiana non-resident pharmacy permit.

TEXAS

17. On July 2, 2019, pursuant to an Agreed Board Order, the Texas State Board of Pharmacy fined Pharmcore \$1,000 based on its failure to disclose its Kentucky license discipline.

COLORADO

18. On November 20, 2019, pursuant to a stipulation, the Colorado Board of Pharmacy fined Pharmcore \$1,725 and issued it a Letter of Admonition based on its failure to disclose its Louisiana license discipline.

MARYLAND

19. On December 11, 2019, pursuant to a Consent Order, the Maryland Board of Pharmacy fined Pharmcore \$5,000 for: (1) failing to timely disclose that the Food and Drug Administration issued a Form 483 list of observations following a site inspection; (2) failing to timely disclose its change of address; (3) dispensing 296 drugs into Maryland from its new location without obtaining a permit for that location; and (4) failing to timely disclose its Oklahoma and Kentucky license discipline.

OHIO

20. On July 8, 2020, pursuant to a Settlement Agreement, the Ohio Board of Pharmacy fined Pharmcore \$5,000 based on: (1) shipping 4,586 prescriptions for dangerous drugs to Ohio patients between November 2015 and July 2018 without holding a license as a Terminal Distributor of Dangerous Drugs in Ohio; and (2) Mr. Rabbani's criminal conviction and the underlying conduct.

KANSAS

21. Effective June 10, 2019, the Kansas Board of Pharmacy (Kansas Board) disciplined Pharmcore's Kansas non-resident pharmacist registration (Kansas license). Pursuant to a Stipulation and Consent Order, the Kansas Board found: (1) Pharmcore failed to timely notify the Kansas Board of its change of address; (2) Pharmcore failed to timely notify the Kansas Board of its November 2017 Oklahoma license discipline;

and (3) based on inspections by the National Association of Boards of Pharmacy and State of Florida, Pharmcore maintained products with beyond-use dates outside the acceptable range, did not meet cleaning standards, stored normal Saline inappropriately, employed an improperly-garbed technician, did not document training in compounding, did not complete all necessary surface sampling; and maintained incomplete compounding records. Based thereon, the Kansas Board fined Pharmcore \$7,180.

22. Effective September 21, 2020, the Kansas Board disciplined Pharmcore's Kansas license for violating both the June 2019 Stipulation and Consent Order and Kansas statutes governing pharmacies. Pursuant to a second Stipulation and Consent Order, the Kansas Board found Pharmcore failed to timely notify the Kansas Board of its license discipline in Alaska, Minnesota, Louisiana, Texas, Colorado, and Maryland. Based on both the untimely disclosure as well as the circumstances underlying the license discipline in those states, the Kansas Board fined Pharmcore \$9,000 and placed its Kansas license on probation for three years, subject to terms and conditions.

Matters in Aggravation

23. On May 22, 2017, the Board issued Citation No. CI 2016 71050 to Pharmcore for violating Business and Professions Code⁵ section 4127.2, subdivision (a), by shipping at least 15,033 prescriptions for 362,587 units of compounded sterile drug products into California without a sterile compounding pharmacy license between

⁵ All statutory references are to the Business and Professions Code, unless otherwise specified.

January 1 and June 30, 2016. The Board fined Pharmcore \$5,000, which it has since paid in full.

Respondents' Evidence

24. Mr. Rabbani testified on Pharmcore's behalf. He is the company's current owner and runs its day-to-day operations. Regarding his ownership of Pharmcore, he explained he began to help Mr. Krupnikas with the company in 2004. He and Mr. Krupnikas agreed that his work entitled him to some ownership of the company, but they did not formalize any transfer of ownership until many years later. On August 21, 2015, Mr. Krupnikas transferred to Mr. Rabbani 100 percent ownership of the company. Mr. Rabbani viewed this as "a two-step process." The first step constituted Mr. Krupnikas honoring their agreement to give Mr. Rabbani 50 percent of the company in exchange for his help managing it over the years. The parties agreed to backdate that half of Mr. Rabbani's ownership to June 2004. The second step constituted Mr. Krupnikas selling his remaining 50 percent to Mr. Rabbani, which they accomplished through written documents titled "Stock Power" and "Stock Transfer Agreement." Both documents identified Mr. Rabbani as a 50 percent owner of Pharmcore as of August 21, 2015. At hearing, Mr. Rabbani explained he "didn't have [his] thinking cap on" when he signed both documents that stated he already owned 50 percent of the company. He further explained his attorneys advised him to list his ownership date retroactively to June 2004.

25. In support of its 2020 application, Pharmcore also submitted to the Board 20 individual corporate stock certificates. The certificates numbered 1 through 10 are dated August 24, 2015, and state they were transferred from Mr. Krupnikas to Mr. Rabbani on that date. The certificates numbered 11 through 20 were dated June 1, 2004, and state they originated in Mr. Rabbani's name on that date. At hearing, Mr.

Rabbani testified he filled out all 20 certificates on August 24, 2015, and dated half of them for June 2004 at the advice of his attorney.

26. Mr. Rabbani reasoned that, as a result of the August 2015 agreement to backdate his ownership to June 2004, the 2008 application did not in fact contain any false information because, as of June 2008, he did not actually own any part of Pharmcore. He further insisted that the 2020 application did not contain any false information because it accurately reflected the dates he acquired ownership as provided for in the August 2015 documents.

27. Regarding his 2014 criminal conviction, Mr. Rabbani denied any wrongdoing. According to him, he was "a passive investor" in Ninth Street Pharmacy who received compensation but had no equity in the business. He pled guilty because he was stressed by a child custody dispute at the time and felt unable to adequately defend himself. He has completed all terms of his criminal sentencing and was released from probation on October 26, 2018.

28. The count to which Mr. Rabbani pled guilty specifically stated, among other things: "Between on or about March 2005 and on or about September 2013, the defendant, [Mr. Rabbani], was an owner of Pharmacy Logistics, Inc. d/b/a Ninth Street Pharmacy, and was a responsible corporate officer of Pharmacy Logistics." This was consistent with the Stock Transfer Agreement that Pharmcore submitted in support of its 2020 application. That document, which Mr. Rabbani signed on August 21, 2015, stated that Mr. Rabbani's purchase price for the remaining 50 percent of Pharmcore was "the proceeds of the sale of certain real property called the Ninth Street Pharmacy, located at 2400 S. 9th Street, Philadelphia, Pennsylvania, 19148 ("Ninth Street Pharmacy Sale Proceeds"), including [Mr. Rabbani's] claim to one-half of such proceeds."

29. Mr. Rabbani explained Pharmcore's failure to notify the Board of its change of ownership in 2015 was unintentional. The company was growing quickly and was unable to manage that growth administratively. In addition, he was influenced by his understanding of Florida's laws regarding change of ownership, which he believed only require notification if the sale caused a change in the Federal Employer Identification Number. He further explained that most of Pharmcore's out-of-state discipline was the result of failing to timely renew licensure or notify the various state boards of license discipline in other states. Pharmcore now uses specialized software that prevents it from shipping products to states in which it is not properly licensed.

30. In addition, Pharmcore relocated to a more suitable facility in Fort Lauderdale in approximately August 2018. Leilani Bellieni started working for the company as a quality manager in approximately June 2018. She is now the Director of Quality and oversees all quality assurance policies, testing, and record-keeping for Pharmcore. One reason she joined Pharmcore was because it adheres to Common Good Manufacturing Procedures (CGMPs). CGMPs are a set of quality management systems and procedures that are required for certain facilities. Although Pharmcore is not required to follow CGMPs, she believes its willingness to do so contributes to its good reputation both locally and nationally.

31. Stephanie Melendez, Pharmcore's compliance manager, also testified at hearing. She has worked for the company since approximately August 2018 and was promoted to compliance manager in April 2020. In that role, she handles all licensing and regulatory matters for Pharmcore. The company hold licenses in 43 states, and she believes it is ready and able to comply with all licensing and reporting requirements.

32. In August 2021, the Accreditation Commission for Health Care (ACHC) approved Pharmcore for its Pharmacy Compounding Accreditation Board program.

This is a voluntary process that is available only to companies that meet ACHC's quality, integrity, and effectiveness standards.

CHARACTER EVIDENCE

33. Yaakov Yagen testified at hearing and submitted a letter in support of Mr. Rabbani. Mr. Yagen is a rabbi in New Jersey who has known respondent for approximately 17 years. He believes Mr. Rabbani is a dignified and honest family man who is "a leader in his community" and "works to make the world a better place." He values Mr. Rabbani's judgment and wisdom and often seeks his advice on business and personal matters. He has also witnessed Mr. Rabbani's charitable generosity in providing financial support to a variety of causes supported by Mr. Yagen's congregation. He is aware of Mr. Rabbani's criminal conviction, but it does not change his opinion.

34. Respondents also submitted 12 letters in support of both Pharmcore and Mr. Rabbani. Many of the letters are from medical providers who praised Pharmcore's high quality, commitment to safety, and helpfulness. The other letters are from those who have benefitted from Mr. Rabbani's philanthropy. Collectively, they praised his commitment to his community, high moral standards, generosity, integrity, kindness, and selflessness.

MEDHAT METTIAS'S TESTIMONY

35. Mr. Mettias has worked for Pharmcore since approximately 2006. He started as a staff pharmacist and became the PIC in 2010. He was not asked to review the 2008 or 2020 applications before Pharmcore submitted them. He is not licensed in California and disputes the Board's jurisdiction over him in this matter.

Analysis

36. It is undisputed that Pharmcore failed to disclose to the Board any change of its ownership or address until it submitted its 2020 application in June 2020. It is also undisputed that Pharmcore was disciplined by multiple states for acts that would be grounds for license discipline in California. Finally, it is undisputed that Mr. Rabbani and Mr. Krupnikas were convicted of introducing misbranded drugs into interstate commerce.

37. As a result, the only allegation in dispute concerns whether Pharmcore failed to disclose Mr. Rabbani's ownership interest in its 2008 application. On this point, complainant's evidence was more persuasive for two reasons. First, the documentation provided by Pharmcore in support of its 2020 application explicitly states that Mr. Rabbani was a 50 percent owner as of June 2004. Second, the documents created in August 2015, including the Stock Power and Stock Transfer Agreement, identified Mr. Rabbani as a 50 percent owner. Mr. Rabbani's explanation – that he "didn't have [his] thinking cap on" and relied on legal advice when he backdated stock certificates and signed lengthy and formal corporate acquisition documents even though they included information he knew to be factually untrue – was not credible. The more likely explanation is that Pharmcore wanted to deceive the Board about Mr. Rabbani's ownership stake in the company when it submitted its 2008 application. This is consistent with Mr. Rabbani's present-day behavior, in which he denies owning the Ninth Street Pharmacy despite both his guilty plea in federal court admitting to such ownership as well as the terms of the Stock Transfer Agreement, which assert his claim to one half of the Ninth Street Pharmacy sale proceeds.

38. Based on the violations described above, the Board established cause to discipline Pharmcore's license. "The licensee, of course, should be permitted to

introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The Board maintains Disciplinary Guidelines (Guidelines) for use in determining the appropriate discipline against licensees. (Cal. Code Regs., tit. 16, § 1760.) For the offenses alleged in the Accusation, the discipline recommended in the Guidelines ranges from stayed revocation with a two-year probationary period to full and immediate revocation.

39. The Guidelines also provide factors to consider when evaluating the appropriate discipline in a particular case. The factors relevant to this matter include: actual or potential harm to the public or consumers; prior disciplinary record, warnings, citations and fines; number and/or variety of current violations; nature and severity of the acts, offenses or crimes under consideration; aggravating, mitigating, or rehabilitation evidence; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; time passed since the acts or offenses; whether the conduct was intentional or negligent; financial benefit to the respondent from the misconduct; and other licenses held by the respondent and license history of those licenses.

40. Pharmcore argued its out-of-state discipline was based on poor regulatory oversight and inadvertence. This view minimizes the seriousness of Pharmcore’s misconduct, including several hundred separate and distinct violations of substantive pharmacy laws across multiple states. Furthermore, Mr. Rabbani believes the company has shown that it can comply with the law since resolving the variety of cases against it. However, little weight is given to evidence of lawful conduct while on probation because exemplary conduct is expected. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Pharmcore’s Kansas license has been on probation since September 2020

and is scheduled to remain on probation until September 2023. Consequently, any evidence of Pharmcore's lawful conduct must be discounted. Although Mr. Rabbani expressed regret for Pharmcore's misconduct, "a truer indication of rehabilitation is sustained conduct over an extended period of time." (*In re Menna* (1995) 11 Cal.4th 975, 991.) Pharmcore has not yet had enough time to demonstrate sustained lawful conduct while not on probation.

41. Moreover, Mr. Rabbani's criminal conviction was based on his serious misconduct of shipping products without valid prescriptions. He did not take accountability for his misconduct, instead disclaiming any involvement with the pharmacy in question and blaming other stressors. This was inconsistent with his guilty plea and with the Stock Transfer Agreement, in which he claimed a right to half the proceeds of that pharmacy's sale. Mr. Rabbani cannot impeach his conviction. (*Arneson v. Fox* (1980), *supra*, 28 Cal.3d at 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of [respondent's] guilt of the offense charged"].) His attempt to impeach his conviction is problematic because "[f]ully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) By failing to acknowledge and take responsibility for his misconduct, Mr. Rabbani demonstrated he has not taken the steps necessary to demonstrate rehabilitation. This is especially worrisome because Pharmcore's 2017 Board Citation and its license discipline in many other states involved similar misconduct of unlawfully shipping prescription drugs without proper licensure.

42. Finally, Mr. Rabbani and Pharmcore were deceitful with the Board about the nature and timing of his ownership of the company. When Pharmcore submitted

its 2008 application, it stated Mr. Krupnikas was the sole owner. When it submitted its 2020 application, it stated Mr. Rabbani was a 50 percent owner as of June 2004. As discussed above, Mr. Rabbani's explanation for these inconsistencies was wholly unbelievable. Rather, the evidence demonstrated that Pharmcore was not honest with the Board in its applications. When combined with its license discipline in several other states, the serious misconduct that underlies much of that discipline, Mr. Rabbani's criminal conviction, his failure to take responsibility for his criminal conduct, and his ongoing attempt to justify the dishonesty in Pharmcore's applications, public protection is best served by revoking Pharmcore's California pharmacy license.

Costs

43. Pursuant to section 125.3, complainant requested Pharmcore be ordered to reimburse the Board its costs for prosecution of this matter. Complainant submitted a Certification of Prosecution Costs signed by Ms. Siemantel. This certification indicates Ms. Siemantel and seven of her colleagues billed the Board \$18,960 in costs for 86.25 hours enforcing this matter and includes a daily itemization of the tasks performed and time consumed. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative, shall be prima facie evidence of reasonable costs of prosecution of the case. (§ 125.3, subd. (c).) Pharmcore did not object to the costs at hearing.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. In an action to revoke or suspend a nonresident pharmacy permit, complainant bears the burden to prove her case by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Once cause for discipline is established, the burden of proof shifts to respondent to demonstrate sufficient rehabilitation by a preponderance of the evidence.

Applicable Laws

2. Every license issued by the Board may be suspended or revoked. (§ 4300, subd. (a).) The Board shall discipline the holder of any license by suspending judgment, placing the license holder on probation, suspending its right practice for a period not exceeding one year, revoking its license, or taking any other action in relation to discipline as the Board in its discretion deems proper. (§ 4300, subd. (b).)

3. "The board may deny, suspend, or revoke any license where conditions exist in relation to any person holding 10 percent or more of the ownership interest or where conditions exist in relation to any officer, director, or other person with management or control of the license that would constitute grounds for disciplinary action against a licensee." (§ 4302.) "License" includes a nonresident pharmacy permit. (§ 4032.)

4. "Each person holding a . . . permit . . . to practice or engage in any activity in the State of California under any and all laws administered by the Board . . . shall within 30 days notify the Board at its said office of any and all changes of residence address, giving both the old and new address." (Cal. Code Regs., tit. 16, § 1704, subd. (a).)

5. Pursuant to California Code of Regulations, title 16, section 1709:

(a) Each license issued by the board to operate a pharmacy shall reflect the name and address of the pharmacy, the form of ownership, and the pharmacist-in-charge. Each pharmacy shall, in its initial application and on the annual renewal form, report the name of the pharmacist-in-charge, the names of all owners, and the names of the corporate officers (if a corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall be reported to the board within 30 days of the change.

(b)(1) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original license was issued, shall require written notification to the board within 30 days of the transfer.

(2) Any transfer of the management or control over a business entity licensed by the board to a person or entity who did not have management or control over the license

at the time the original license was issued, shall require written notification to the board within 30 days of the transfer.

(c) A license issued by the board shall not be transferred from one owner to another. The following shall constitute a change of ownership and shall require a new application for licensure:

(1) any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license. The new owner shall apply to the board for licensure in advance of the proposed transaction taking place.

6. Pursuant to section 4307, subdivision (a):

"Any person . . . whose license has been revoked . . . or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any . . . corporation . . . whose . . . license has been . . . revoked . . . and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was . . . revoked . . . shall be

prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

[¶ . . . ¶]

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

7. ""Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license" as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee." (§ 4307, subd. (b).)

Causes for Discipline

8. The Board may discipline a permit holder for "[t]he commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption." (§ 4301, subd. (f).) As discussed in Factual Findings 4 through 8 and 36 through 42, Pharmcore failed to disclose Mr. Rabbani as an owner in its 2008 application, timely disclose its change of ownership to the Board in 2015, and timely disclose its change of address to the Board in 2018. Based on these actions, individually and collectively, cause exists to discipline respondent Pharmcore's nonresident pharmacy permit pursuant to section 4301, subdivision (f), both independently and as that section interacts with section 4302.

9. The Board may discipline a permit holder for "[k]nowingly making or signing any certificate or other document that falsely represents the existence or

nonexistence of a state of facts.” (§ 4301, subd. (g).) As discussed in Factual Findings 4 through 8 and 36 through 42, Mr. Krupnikas signed and submitted to the Board Pharmcore’s 2008 application that included false ownership information. Cause therefore exists to discipline Pharmcore’s nonresident pharmacy permit pursuant to section 4301, subdivision (g), both independently and as that section interacts with section 4302.

10. The Board may discipline a permit holder based on “[t]he revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter that would be grounds for revocation, suspension, or other discipline under this chapter.” (§ 4301, subd. (n).) As discussed in Factual Findings 13 through 22 and 36, Pharmcore’s pharmacy license was disciplined in several states for acts that would be grounds for license discipline in California. Cause therefore exists to discipline respondent Pharmcore’s nonresident pharmacy permit pursuant to section 4301, subdivision (n).

11. As discussed in Factual Finding 12, the Florida Board of Pharmacy disciplined Mr. Krupnikas’s Florida pharmacist license in June 2016. This occurred after Mr. Krupnikas no longer owned any share of Pharmcore. Cause therefore does not exist to discipline Pharmcore’s nonresident pharmacy permit based on Mr. Krupnikas’s 2016 Florida license discipline pursuant to section 4301, subdivision (n), as that section interacts with section 4302.

12. The Board may discipline a permit holder for “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board

or by any other state or federal regulatory agency.” (§ 4301, subd. (o).) As discussed in Factual Findings 4 through 8 and 36, Pharmcore failed to timely disclose its change of ownership to the Board in 2015 and failed to timely disclose its change of address to the Board in 2018, in violation of California Code of Regulations, title 16, sections 1704, subdivision (a), and 1709. As discussed in Factual Findings 9 through 11, Mr. Rabbani and Mr. Krupnikas violated federal pharmacy laws when they introduced misbranded drugs into interstate commerce. Based on these violations individually and collectively, cause exists to discipline Pharmcore’s nonresident pharmacy permit pursuant to section 4301, subdivision (o), both independently and as that section interacts with section 4302.

13. The Board may discipline a permit holder based on “[t]he conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.” (§ 4301, subd. (l).) As discussed in Factual Findings 9 through 11, Mr. Rabbani and Mr. Krupnikas were both convicted of introducing misbranded drugs into interstate commerce, a crime that is substantially related to the qualifications, functions, and duties of a Board licensee. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(1) & (2).) Cause therefore exists to discipline Pharmcore’s nonresident pharmacy permit pursuant to section 4301, subdivision (l), as that section interacts with section 4302.

Section 4307 Prohibitions

14. As discussed in Factual Findings 4 through 11, 13 through 22, and 36 through 42, and Legal Conclusions 8 through 10 and 12 through 13, Pharmcore’s nonresident pharmacy permit is subject to revocation and will be revoked. Pursuant to section 4307, subdivision (a), Pharmcore shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any

other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.

15. As discussed in Factual Findings 4 through 8, 10 through 11, and 36, and Legal Conclusions 8, 9, 12, and 13, Mr. Krupnikas was a manager, administrator, owner, member, officer, director, associate, partner, or person with management or control of Pharmcore and, while acting in that capacity, had knowledge of or knowingly participated in the conduct for which Pharmcore's nonresident pharmacy permit is revoked. Pursuant to section 4307, subdivision (a), Mr. Krupnikas shall therefore be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.

16. As discussed in Factual Findings 4 through 9, 11, 13 through 22, and 36 through 42, and Legal Conclusions 8 through 10 and 12 through 13, Mr. Rabbani was a manager, administrator, owner, member, officer, director, associate, partner, or person with management or control of Pharmcore and, while acting in that capacity, had knowledge of or knowingly participated in the conduct for which Pharmcore's nonresident pharmacy permit is revoked. Pursuant to section 4307, subdivision (a), Mr. Rabbani shall therefore be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.

17. As discussed in Factual Finding 35, Mr. Mettias did not review Pharmcore's 2008 or 2020 applications before Pharmcore submitted them. The evidence did not establish that Mr. Mettias had knowledge of or knowingly participated in the conduct for which Pharmcore's nonresident pharmacy permit is

revoked. Therefore, no cause exists to prohibit Mr. Mettias from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee pursuant to section 4307, subdivision (a).

Costs

18. In *Zuckerman v. Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of its position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

19. As set forth in Factual Finding 43, complainant seeks reimbursement in the total amount of \$18,960 for its prosecution costs incurred in this matter. These costs are reasonable in light of the facts and issues presented in this case, and Pharmcore did not challenge the costs at hearing or present any evidence of its inability to pay costs. When all the *Zuckerman* factors are considered, there is no basis to reduce the amount of costs complainant seeks, and Pharmcore shall be ordered to pay the requested amount in full if and when its permit is reinstated.

ORDER

1. Nonresident Pharmacy Permit Number NRP 962, issued to respondent Pharmcore, Inc., dba Hallandale Pharmacy, is REVOKED. Pharmcore shall relinquish its

permit, including any indicia of licensure issued by the Board, to the Board within 10 days of the effective date of this decision. Pharmcore may not reapply or petition the Board for reinstatement of its revoked permit for three years from the effective date of this decision.

2. As a condition precedent to reinstatement of its revoked permit, Pharmcore shall reimburse the Board for its costs of prosecution in the amount of \$18,960. Said amount shall be paid in full prior to the reinstatement of its permit unless otherwise ordered by the Board.

3. Respondent Pharmcore, Inc., dba Hallandale Pharmacy, is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.


4. Respondent Gennady Krupnikas is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.

5. Respondent David G. Rabbani is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a Board licensee until Pharmcore's nonresident pharmacy permit is reinstated.

//

6. The Accusation against respondent Medhat Mettias is DISMISSED, with prejudice.

DATE: April 11, 2022


Sean Gavin (Apr 11, 2022 12:15 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

MATTHEW RODRIQUEZ
Acting Attorney General of California
KAREN R. DENVIR
Supervising Deputy Attorney General
MALISSA N. SIEMANTEL
Deputy Attorney General
State Bar No. 240157
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7555
Facsimile: (916) 324-5567
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 7010

**PHARMCORE, INC.,
DBA HALLANDALE PHARMACY
GENNADY KRUPNIKAS, PRESIDENT,
OWNER (6/4/04-8/24/15)
DAVID G. RABBANI, PHARMACIST-IN-
CHARGE (2/24/09-7/1/14), OWNER
MEDHAT METTIAS, PHARMACIST-IN-
CHARGE
1109 E. Hallandale Beach Blvd.
Hallandale, FL 33009**

ACCUSATION

Nonresident Pharmacy Permit No. NRP 962

Respondents.

PARTIES

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

2. On or about February 24, 2009, the Board issued Nonresident Pharmacy Permit Number NRP 962 to Pharmcore, Inc., doing business as Hallandale Pharmacy (Respondent Pharmcore), with Gennady Krupnikas (Respondent Krupnikas) as President and David G.

1 Rabbani (Respondent Rabbani) as Pharmacist-in-Charge. On July 1, 2014, Medhat Mettias (PIC
2 Mettias) became the Pharmacist-in-Charge. The Nonresident Pharmacy Permit expired on
3 February 1, 2021, and has not been renewed.

4 **JURISDICTION**

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

8 4. Code section 4300 states:

9 (a) Every license issued may be suspended or revoked.

10 (b) The board shall discipline the holder of any license issued by the board, whose
11 default has been entered or whose case has been heard by the board and found guilty,
by any of the following methods:

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

14 (3) Suspending his or her right to practice for a period not exceeding one year.

15 (4) Revoking his or her license.

16 (5) Taking any other action in relation to disciplining him or her as the board in
17 its discretion may deem proper.

18 (c) The board may refuse a license to any applicant guilty of unprofessional conduct.
19 The board may, in its sole discretion, issue a probationary license to any applicant for
20 a license who is guilty of unprofessional conduct and who has met all other
requirements for licensure. The board may issue the license subject to any terms or
conditions not contrary to public policy, including, but not limited to, the following:

21 (1) Medical or psychiatric evaluation.

22 (2) Continuing medical or psychiatric treatment.

23 (3) Restriction of type or circumstances of practice.

24 (4) Continuing participation in a board-approved rehabilitation program.

25 (5) Abstention from the use of alcohol or drugs.

26 (6) Random fluid testing for alcohol or drugs.

27 (7) Compliance with laws and regulations governing the practice of pharmacy.

28 ///

///

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(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. Code section 4300.1 states:

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

STATUTORY PROVISIONS

6. Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

///

///

1 7. Code section 4301 states, in pertinent part:

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

5 ...

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

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

11 ...

12 (l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of
14 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
15 regulating controlled substances or of a violation of the statutes of this state
16 regulating controlled substances or dangerous drugs shall be conclusive evidence of
17 unprofessional conduct. In all other cases, the record of conviction shall be
18 conclusive evidence only of the fact that the conviction occurred. The board may
19 inquire into the circumstances surrounding the commission of the crime, in order to
20 fix the degree of discipline or, in the case of a conviction not involving controlled
21 substances or dangerous drugs, to determine if the conviction is of an offense
22 substantially related to the qualifications, functions, and duties of a licensee under this
23 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere is deemed to be a conviction within the meaning of this provision. The
25 board may take action when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under
28 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
 dismissing the accusation, information, or indictment.

 ...

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

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

 ...

1 8. Code Section 4302 states:

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

5 9. Code section 4303, subdivision (b), states:

6 The board may cancel, deny, revoke, or suspend a nonresident pharmacy registration,
7 issue a citation or letter of admonishment to a nonresident pharmacy, or take any
other action against a nonresident pharmacy that the board may take against a resident
8 pharmacy license, on any of the same grounds upon which such action might be taken
against a resident pharmacy, provided that the grounds for the action are also grounds
9 for action in the state in which the nonresident pharmacy is permanently located.

10 10. Code section 4307, subdivision (a), states:

11 Any person who has been denied a license or whose license has been revoked or is
12 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,
13 director, associate, or partner of any partnership, corporation, 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,
14 owner, member, officer, director, associate, or partner had knowledge of or
knowingly participated in any conduct for which the license was denied, revoked,
15 suspended, or placed on probation, shall be prohibited from serving as a manager,
administrator, owner, member, officer, director, associate, or partner of a licensee
16 as follows:

17 (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
18 years.

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

20
21 **REGULATORY PROVISIONS**

22 11. California Code of Regulations, title 16, (Regulations) section 1704 states:

23 Each person holding a certificate, license, permit, registration or exemption to
24 practice or engage in any activity in the State of California under any and all laws
administered by the Board shall file a proper and current residence address with the
25 Board at its office in Sacramento and shall within 30 days notify the Board at its said
office of any and all changes of residence address, giving both the old and new
26 address.

27 ///

28 ///

12. Regulations section 1709 states:

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

(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days.

(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license.

COST RECOVERY

13. Code Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL ALLEGATIONS

Respondents Pharmcore, Krupnikas, and Rabbani - Ownership/Location Information and Board Applications

14. On or about and between June 4, 2004, and August 23, 2015, Respondent Krupnikas and Respondent Rabbani were each 50% owners of Respondent Pharmcore.

15. On or about December 1, 2008, the Board received a Nonresident Pharmacy Permit Application for Respondent Pharmcore dated April 8, 2008 (original application). The original application listed Respondent Rabbani as Pharmacist-in-Charge, but did not disclose Respondent Rabbani as an owner of Respondent Pharmcore. The original application was signed by Respondent Krupnikas, and stated Respondent Krupnikas was president of Respondent Pharmcore and there were no shareholders. The original application was also signed by Respondent Rabbani, but the signature was partially whited-out and stated "signed in error."

1 16. On or about August 24, 2015, Respondent Krupnikas transferred his entire ownership
2 of Respondent Pharmcore to Respondent Rabbani, making Respondent Rabbani sole owner of
3 Respondent Pharmcore.

4 17. On or about June 3, 2020, the Board received an Ownership Information form signed
5 by Respondent Rabbani and Jessica Maman. The Ownership Information form stated that on
6 August 24, 2015, Respondent Krupnikas's 50% of the shares in Respondent Pharmcore were
7 cancelled and Respondent Rabbani was issued Respondent Krupnikas's 50% of the shares, giving
8 Respondent Rabbani 100% of the shares in Respondent Pharmcore.

9 18. On or about June 3, 2020, the Board received a Nonresident Pharmacy License
10 Application for Respondent Pharmcore that was dated April 23, 2020. The application stated
11 there was a change of ownership with April 14, 2003 as the anticipated change of ownership date,
12 and change of location with April 14, 2003 as the anticipated move date. On or about July 13,
13 2020, the first page of the Nonresident Pharmacy License Application for Respondent Pharmcore
14 was amended to change the anticipated move date to July 30, 2018.

15 *Respondent Krupnikas and Respondent Rabbani – Federal Convictions*

16 19. On or about July 28, 2015, in the case entitled *United States v. Gennady Krupnikas*
17 (United States District Court, District of Rhode Island, Case No. 1:15CR000016-01S),
18 Respondent Krupnikas was convicted on his plea of guilty to a violation of Title 21 United States
19 Code (U.S.C.) sections 331(a) and 333(a)(1) (Introduction of Misbranded Drug), a misdemeanor.
20 The circumstances of the crime, as stated in the Misdemeanor Information, are as follows: On or
21 about and between February 13, 2013, and July 15, 2013, Respondent Krupnikas and Respondent
22 Rabbani owned and operated Pharmacy Logistics, Inc., doing business as Ninth Street Pharmacy,
23 that dispensed certain prescription drugs "based upon invalid prescriptions, which were issued
24 without regard for the customer's physical condition or any pre-existing medical conditions,
25 without review of their medical records, without consultation with a primary care physician, and
26 without consideration of the reasons for which the drugs were sought."

27 20. On or about October 27, 2015, in the case entitled *United States v. David G. Rabbani*
28 (United States District Court, District of Rhode Island, Case No. 1:14CR00123-01S), Respondent

1 Rabbani was convicted on his plea of guilty to a violation of Title 21 U.S.C. sections 331(a) and
2 333(a)(1) (Introduction of Misbranded Drug), a misdemeanor. The circumstances of the crime, as
3 stated in the Misdemeanor Information, are: On or about and between February 13, 2013, and
4 July 15, 2013, Respondent Krupnikas and Respondent Rabbani owned and operated Pharmacy
5 Logistics, Inc., doing business as Ninth Street Pharmacy, that dispensed certain prescription drugs
6 “based upon invalid prescriptions, which were issued without regard for the customer’s physical
7 condition or any pre-existing medical conditions, without review of their medical records, without
8 consultation with a primary care physician, and without consideration of the reasons for which the
9 drugs were sought.”

10 *Respondent Krupnikas and Respondent Pharmcore – Out of State Discipline*

11 21. On or about June 27, 2016, in the case entitled *Department of Health v. Gennady*
12 *Krupnikas, RPH*, Case No. 2015-23989, the State of Florida Board of Pharmacy (Florida Board)
13 disciplined Respondent Krupnikas based upon the Florida Board’s finding that while Respondent
14 Krupnikas was licensed as a pharmacist by the Florida Board, Respondent Krupnikas was
15 convicted by the United State District Court, District of Rhode Island, of introduction of
16 misbranded drug into interstate commerce, in violation of Title 21 United States Code sections
17 331(a) and 333(a)1, a crime related to the practice of, or the ability to practice, pharmacy.

18 22. On or about November 29, 2017, in the case entitled *In the Matter of the Complaint*
19 *Against Hallandale Pharmacy*, Case No. 1479, the Oklahoma Board of Pharmacy (Oklahoma
20 Board) disciplined Respondent Pharmcore, licensed as Hallandale Pharmacy. The circumstances
21 are that in 2016 Respondent Pharmcore shipped 627 prescriptions into Oklahoma after the
22 expiration of its nonresident pharmacy license, and prescribers were located in Florida and
23 California for patients located in Oklahoma. Further, in 2017, Respondent Pharmcore shipped
24 358 prescriptions into Oklahoma, and prescribers were located in Florida and California for
25 patients located in Oklahoma. Respondent Pharmcore also failed to send controlled substance
26 prescription records to the Oklahoma Prescription Drug Monitoring Program. Respondent
27 Pharmcore admitted the following violations:

28 ///

1 a. Oklahoma Administrative Code (OAC) section 535:15-3-9(b)(1) and Oklahoma
2 Statutes (O.S.), title 59, section 353.18(A)(1), when Respondent Pharmcore failed to make an
3 application and receive an annual nonresident pharmacy license.

4 b. OAC section 535:15-3-9(e)(3) and O.S., title 63, section 2-309C, when
5 Respondent Pharmcore failed to send Schedule II, III, IV, and V prescription records to the
6 Oklahoma Prescription Drug Monitoring Program.

7 c. OAC section 535:15-3-13(D), when Respondent Pharmcore dispensed a
8 prescription drug knowing or that it should have known that the prescription was issued without a
9 valid preexisting patient-prescriber relationship.

10 d. O.S., title 63, section 2-309(G), when Respondent Pharmcore solicited,
11 dispensed, received, or delivered a controlled dangerous substance through the mail, without
12 personally knowing the practitioner and circumstances clearly indicate such method of delivery is
13 in the best interest of the health and welfare of the ultimate user.

14 e. OAC section 535:15-3-14(a), when Respondent Pharmcore failed to maintain a
15 patient record system for whom prescription drug orders are dispensed.

16 f. OAC sections 535:15-3-2(b)(10)(C) and 535:15-3-2(b)(2), when Respondent
17 Pharmcore failed to have a pharmacy manager who was responsible for all aspects of the
18 operation related to the practice of pharmacy.

19 g. O.S., title 59, section 353.24(A)(4), when Respondent Pharmcore offered to the
20 public its services as a “pickup station” or intermediary for the purpose of having prescriptions
21 filled or delivered, or it authorized a person, firm or business establishment to act for it in this
22 manner.

23 23. On or about October 10, 2018, in the case entitled *In Re Pharmcore Inc d/b/a*
24 *Hallandale Pharmacy*, Case No. 18-0358, the Kentucky Board of Pharmacy (Kentucky Board)
25 disciplined Respondent Pharmcore, licensed as Hallandale Pharmacy, based upon the Kentucky
26 Board’s finding that from August 2017 to March 2018 Respondent Pharmcore shipped 22
27 prescriptions into Kentucky without a Kentucky pharmacy permit.

28 ///

1 24. On or about June 10, 2019, in the case entitled *In the Matter of Hallandale Pharmacy*,
2 Case No. 17-185, the Kansas Board of Pharmacy (Kansas Board) disciplined Respondent
3 Pharmcore, licensed as Hallandale Pharmacy, based upon the Kansas Board's finding that
4 Respondent Pharmcore moved its facility on July 17, 2018, but did not notify the Kansas Board
5 until November 28, 2018; Respondent Pharmcore failed to disclose discipline by the Oklahoma
6 Board in its renewal application or in its subsequent address change application to the Kansas
7 Board; and Respondent Pharmcore had the following violations: beyond use dates that were out
8 of the acceptable range, cleaning violations, saline was stored without temperature controls or
9 monitoring, a technician with improper garbing, had training that was not documented, surface
10 sampling was not completed, and compounding records were incomplete.

11 25. On or about March 7, 2019, in the case entitled *In the Matter of Pharmcore Inc., d/b/a*
12 *Hallandale Pharmacy*, Case No. 2018-000795, the Alaska Board of Pharmacy (Alaska Board)
13 disciplined Respondent Pharmcore pursuant to Alaska Statutes sections 08.01.75, 08.80.158(a),
14 08.80.158(e), 08.80.261(a)(14), and Alaska Administrative Code section 52.920(a)(3) and
15 52.920(a)(15). The circumstances are that Respondent Pharmcore shipped "high-risk
16 compounded products" to Alaska without a valid license, had deficiencies of USP Chapter 797
17 guidelines and assignment of use dates beyond standard practice of USP 797 guidelines, and
18 shipped approximately 138 prescriptions to Alaska without a valid license.

19 26. On or about May 29, 2019, in the case entitled *In the Matter of Pharmcore, Inc. d/b/a*
20 *Hallandale Pharmacy*, Case No. 19-0053, the Louisiana Board of Pharmacy (Louisiana Board)
21 disciplined Respondent Pharmcore based upon the Louisiana Board's finding that Respondent
22 Pharmcore dispensed 65 prescriptions to Louisiana residents without a nonresident pharmacy
23 permit.

24 27. On or about July 2, 2019, in the case entitled *In the Matter of Hallandale Pharmacy*,
25 Agreed Order No. F-19-006, the Texas State Board of Pharmacy (Texas Board) disciplined
26 Respondent Pharmcore, licensed as Hallandale Pharmacy, based upon the Texas Board's findings
27 as follows: Respondent Pharmcore entered into an Agreed Order with the Kentucky Board after
28 Respondent Pharmcore shipped compounded drug products into Kentucky when the pharmacy

1 did not hold a permit to operate as a pharmacy in Kentucky, and Respondent Pharmcore failed to
2 disclose disciplinary action by the Kentucky Board in its application for initial licensure as a
3 nonresident pharmacy with the Texas Board.

4 28. On or about November 20, 2019, in the case entitled *In the Matter of Disciplinary*
5 *Proceedings Regarding the Non-Resident Prescription Drug Outlet Registration in the State of*
6 *Colorado of Pharmcore Inc dba Hallandale Pharmacy*, Case Nos. 2019-5141 and 2019-4899, the
7 Colorado State Board of Pharmacy (Colorado Board) disciplined Respondent Pharmcore based
8 upon the Colorado Board's finding that Respondent Pharmcore failed to report discipline in
9 Louisiana to the Colorado Board for dispensing prescriptions into Louisiana prior to obtaining the
10 required permit.

11 29. On or about December 11, 2019, in the case entitled *In the Matter of Hallandale*
12 *Pharmacy*, Case No. 19-266, the Maryland Board of Pharmacy (Maryland Board) disciplined
13 Respondent Pharmcore, licensed as Hallandale Pharmacy, based upon the Maryland Board's
14 finding that Respondent Pharmcore failed to report the FDA 483 to the Maryland Board, failed to
15 timely submit a change of location application with the Maryland Board and dispensed drugs
16 without a Maryland permit for that location, failed to report discipline by the Oklahoma and
17 Kentucky Boards as required.

18 30. On or about July 8, 2020, in the case entitled *In the Matter of: Pharmcore dba*
19 *Hallandale*, Case No. A-2019-0249, the Ohio Board of Pharmacy (Ohio Board) disciplined
20 Respondent Pharmcore based upon the Ohio Board's finding that from November 2, 2015,
21 through July 9, 2018, Respondent Pharmcore dispensed 4,586 prescriptions for dangerous drugs
22 to Ohio residents while it was not licensed as a Terminal Distributor of Dangerous Drugs, and
23 Respondent Pharmcore did not disclose Respondent Rabbani's federal conviction as required in
24 its application for licensure.

25 31. On or about September 21, 2020, in the case entitled *In the Matter of Hallandale*
26 *Pharmacy*, Case No. 19-397, the Kansas Board disciplined Respondent Pharmcore based upon
27 the Kansas Board's finding that Respondent Pharmcore failed to notify the Kansas Board of
28 discipline from the following states within 30 days: Alaska, Minnesota, Louisiana, Texas,

Colorado and Maryland; and Respondent Pharmcore failed to disclose discipline by the Alaska Board and discipline by the Louisiana Board in its application to renew its Kansas nonresident pharmacy registration.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

32. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (f), in that Respondent Pharmcore committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in paragraphs 13 through 17, above, and as specifically set forth as follows:

a. Respondent Pharmcore failed to disclose its shareholders in the original application submitted to the Board.

b. Respondent Pharmcore failed to disclose its change of ownership in 2015 to the Board until it submitted its permit applications to the Board on or about June 3, 2020.

c. Respondent Pharmcore failed to disclose its change of address to the Board until it submitted its permit applications to the Board on or about June 3, 2020.

33. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (f), in conjunction with Code section 4302, in that Respondent Krupnikas and Respondent Rabbani committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when they signed the application dated April 8, 2008, that failed to disclose Respondent Pharmcore's shareholders in the original application submitted to the Board, as set forth in paragraphs 13 through 17, above.

SECOND CAUSE FOR DISCIPLINE

(Signing Documents Falsely Representing Facts)

34. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (g), in that Respondent Pharmcore made or signed the original application submitted to the Board that contained false information, as set forth in paragraphs 13 through 17, above.

///

35. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (f), in conjunction with Code section 4302, in that Respondent Krupnikas and Respondent Rabbani signed the original application submitted to the Board that contained false information, as set forth in paragraphs 13 through 17, above.

THIRD CAUSE FOR DISCIPLINE

(Out of State Discipline)

36. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (n), in that Respondent Pharmcore was disciplined as a pharmacy by out of state agencies, as set forth in paragraphs 21 through 30, above.

37. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (n), in conjunction with Code section 4302, in that Respondent Krupnikas was disciplined by an out of state agency, as set forth in paragraph 20, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Laws Governing Pharmacy)

38. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (o), in that Respondent Pharmcore violated laws governing pharmacy, as set forth in paragraphs 21, its subparts, and 24, above.

39. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (o), in conjunction with Regulations sections 1704 and 1709, in that Respondent Pharmcore violated laws governing pharmacy in that Respondent Pharmcore failed to report its change of ownership and change of location to the Board within 30 days, as set forth in paragraphs 13 through 17, above.

40. Respondent Pharmcore's pharmacy permit is subject to discipline under Code section 4301, subdivision (o), in conjunction with Code section 4302, in that Respondent Krupnikas and Respondent Rabbani, as an owners and operators of Pharmacy Logistics, Inc., doing business as Ninth Street Pharmacy, violated laws governing pharmacy when it illegally dispensed prescription drugs, as set forth in paragraphs 18 and 19, above.

///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Criminal Convictions)

3 41. Respondent Pharmcore's pharmacy permit is subject to denial under Code sections
4 490 and 4301, subdivision (l), in conjunction with Code section 4302, in that Respondent
5 Krupnikas and Respondent Rabbani were each convicted on his own plea of guilty to a violation
6 of Title 21 U.S.C. sections 331(a) and 333(a)(1) (Introduction of Misbranded Drug), a
7 misdemeanor, as set forth in paragraphs 18 and 19, above. The crimes are substantially related to
8 the qualifications, functions, and duties of a licensee.

9 **MATTER IN AGGRAVATION**

10 42. On or about May 22, 2017 the Board issued Citation No. CI 2016 71050 to
11 Respondent Pharmcore for a violation of Code section 4127.2, subdivision (a), in that on or about
12 and between January 1, 2016, and June 30, 2016, Respondent Pharmcore shipped at least 15,033
13 prescriptions for 362, 587 units of compounded sterile drug products into California without a
14 sterile compounding pharmacy license. Respondent Pharmcore paid the \$5,000 fine.

15 **OTHER MATTERS**

16 43. Pursuant to Code section 4307, if discipline is imposed on Nonresident Pharmacy
17 Permit Number NRP 962 issued to Pharmcore Inc., doing business as Hallandale Pharmacy,
18 Pharmcore Inc. shall be prohibited from serving as a manager, administrator, owner, member,
19 officer, director, associate, or partner of a licensee for five years if Nonresident Pharmacy Permit
20 Number NRP 962 is placed on probation or until Nonresident Pharmacy Permit Number NRP 962
21 is reinstated if it is revoked.

22 44. Pursuant to Code section 4307, if discipline is imposed on Nonresident Pharmacy
23 Permit Number NRP 962 issued to Pharmcore Inc., doing business as Hallandale Pharmacy,
24 while Gennady Krupnikas and/or David G. Rabbani have been an officer and owner and had
25 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
26 Gennady Krupnikas and David G. Rabbani shall be prohibited from serving as a manager,
27 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if

28 ///

1 Nonresident Pharmacy Permit Number NRP 962 is placed on probation or until Nonresident
2 Pharmacy Permit Number NRP 962 is reinstated if it is revoked.

3 45. Pursuant to Code section 4307, if discipline is imposed on Nonresident Pharmacy
4 Permit Number NRP 962 issued to Pharmcore Inc., doing business as Hallandale Pharmacy,
5 while Medhat Mettias has been an manager or administrator and had knowledge of or knowingly
6 participated in any conduct for which the licensee was disciplined, Medhat Mettias shall be
7 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
8 or partner of a licensee for five years if Nonresident Pharmacy Permit Number NRP 962 is placed
9 on probation or until Nonresident Pharmacy Permit Number NRP 962 is reinstated if it is
10 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 Nonresident Pharmacy Permit Number NRP 962, issued to
15 Pharmcore, Inc., doing business as Hallandale Pharmacy;

16 2. Prohibiting Pharmcore, Inc. from serving as a manager, administrator, owner,
17 member, officer, director, associate, or partner of a licensee for five years if Nonresident
18 Pharmacy Permit Number NRP 962 is placed on probation or until Nonresident Pharmacy Permit
19 Number NRP 962 is reinstated if Nonresident Pharmacy Permit Number NRP 962, issued to
20 Pharmcore, Inc., doing business as Hallandale Pharmacy, is revoked;

21 3. Prohibiting Gennady Krupnikas from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Nonresident
23 Pharmacy Permit Number NRP 962 is placed on probation or until Nonresident Pharmacy Permit
24 Number NRP 962 is reinstated if Nonresident Pharmacy Permit Number NRP 962, issued to
25 Pharmcore, Inc., doing business as Hallandale Pharmacy, is revoked;

26 4. Prohibiting David G. Rabbani from serving as a manager, administrator, owner,
27 member, officer, director, associate, or partner of a licensee for five years if Nonresident
28 Pharmacy Permit Number NRP 962 is placed on probation or until Nonresident Pharmacy Permit

Number NRP 962 is reinstated if Nonresident Pharmacy Permit Number NRP 962, issued to Pharmcore, Inc., doing business as Hallandale Pharmacy, is revoked;

5. Prohibiting Medhat Mettias from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Nonresident Pharmacy Permit Number NRP 962 is placed on probation or until Nonresident Pharmacy Permit Number NRP 962 is reinstated if Nonresident Pharmacy Permit Number NRP 962, issued to Pharmcore, Inc., doing business as Hallandale Pharmacy, is revoked

6. Ordering Pharmcore, Inc., doing business as Hallandale Pharmacy, Gennady Krupnikas and David G. Rabbani to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 4/20/2021

Signature on File

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

SA2020303064
34938156.docx