

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

In the Matter of the Accusation Against:

**LONGS DRUG STORES CALIFORNIA, LLC dba
CVS PHARMACY #09904, Respondent.**

Original Permit No. PHY 49665

Agency Case No. 7014

OAH No. 2021040662

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval 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 October 7, 2021.

It is so ORDERED on September 7, 2021.

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



**Seung W. Oh, Pharm.D.
Board President**

By

1 ROB BONTA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **LONGS DRUG STORES CALIFORNIA, LLC**
14 **DBA CVS PHARMACY #09904**
15 **3667 Castro Valley Blvd.**
16 **Castro Valley, CA 94546**

17 **Original Permit No. PHY 49665**

18 Respondent.

Case No. 7014

OAH No. 2021040662

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR
PUBLIC REPROVAL**

[Bus. & Prof. Code § 495]

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

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Rob Bonta, Attorney General of the State of California, by Amber N. Wipfler, Deputy Attorney
25 General.

26 2. Longs Drug Stores California, LLC., dba CVS Pharmacy #09904 (Respondent) is
27 represented in this proceeding by attorney Jeff J. Astarabadi of Much Shelist, P.C., 660 Newport
28 Center Drive, Suite 900, Newport Beach, CA 92660.

1 **JURISDICTION**

2 3. On or about November 10, 2008, the Board issued Original Permit No. PHY 49665 to
3 Respondent. The Original Permit was in full force and effect at all times relevant to the charges
4 brought in Accusation No. 7014 and will expire on November 1, 2021, unless renewed.

5 4. Accusation No. 7014 was filed before the Board and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on February 25, 2021. Respondent timely filed a Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 7014 is attached as exhibit A and incorporated herein by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 7014. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order for Public Reapproval.

15 6. Respondent is fully aware of its legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 its own expense; the right to confront and cross-examine the witnesses against it; the right to
18 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 8. For the purpose of resolving the Accusation without the expense and uncertainty of
26 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
27 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest
28 those charges.

9. Respondent agrees that its Original Permit is subject to discipline and agrees to be bound by the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reprimand shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order for Public Reprimand is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order for Public Reprimand may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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IT IS FURTHER ORDERED that within 60 days of the effective date of the Decision, Respondent shall pay the Board an administrative fine of \$5,000.


Full Compliance. As a resolution of the charges in Accusation No. 7014, this stipulated settlement is contingent upon Respondent's full compliance with all conditions of this Order. If Respondent fails to satisfy any of these conditions, such failure to comply constitutes cause for discipline, including outright revocation, of Respondent's Original Permit No. PHY 49665.

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1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
3 Reapproval and have fully discussed it with my attorney, Jeff J. Astarabadi. I understand the
4 stipulation and the effect it will have on my Original Permit. I enter into this Stipulated
5 Settlement and Disciplinary Order for Public Reapproval voluntarily, knowingly, and intelligently,
6 and agree to be bound by the Decision and Order of the Board of Pharmacy.

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8 DATED: 7/16/21


9 LONGS DRUG STORES CALIFORNIA, LLC.,
10 DBA CVS PHARMACY #09904;

11 I have read and fully discussed with Respondent Longs Drug Stores California, LLC., dba
12 CVS Pharmacy #09904 the terms and conditions and other matters contained in the above
13 Stipulated Settlement and Disciplinary Order for Public Reapproval. I approve its form and content.

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15 DATED: 7/19/21


16 JEFF J. ASTARABADI
17 Attorney for Respondent
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: July 19, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General



AMBER N. WIPFLER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7014

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Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
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7 *Attorneys for Complainant*

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11 **STATE OF CALIFORNIA**

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13 **LONGS DRUG STORES CALIFORNIA, LLC**
14 **DBA CVS PHARMACY #09904**
15 **3667 Castro Valley Blvd.**
16 **Castro Valley, CA 94546**

ACCUSATION

17 **Original Permit No. PHY 49665**

18 Respondent.

19 **PARTIES**

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

22 2. On or about November 10, 2008, the Board of Pharmacy issued Original Permit
23 Number PHY 49665 to Longs Drug Stores California, LLC., dba CVS Pharmacy #09904. The
24 Original Permit was in full force and effect at all times relevant to the charges brought herein and
25 will expire on November 1, 2021, unless renewed.

26 **JURISDICTION**

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

1 4. Code section 4011 provides that the Board shall administer and enforce both the
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
3 [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300, subdivision (a) provides that every license issued by the Board
5 may be suspended or revoked.

6 6. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 **STATUTORY AND REGULATORY PROVISIONS**

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
14 not be limited to, any of the following:

15 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of or conspiring to violate any provision or term of this chapter or of the applicable
17 federal and state laws and regulations governing pharmacy

18 8. Section 4113, subdivision (c) of the Code provides that “[t]he pharmacist-in-charge
19 shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations
20 pertaining to the practice of pharmacy.”

21 9. Civil Code section 56.10 provides that except where authorized by statute, “[a]
22 provider of health care, health care service plan, or contractor shall not disclose medical
23 information regarding a patient of the provider of health care or an enrollee or subscriber of a
24 health care service plan without first obtaining an authorization . . .”

25 10. California Code of Regulations, title 16, section 1707.2 states:

26 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's
27 agent in all settings:

28 (1) upon request;

 (2) whenever the pharmacist deems it warranted in the exercise of his or her

professional judgment;

(3) whenever the prescription drug has not previously been dispensed to a patient;
or

(4) whenever a prescription drug not previously dispensed to a patient in the same dosage form, strength or with the same written directions, is dispensed by the pharmacy.

...

11. California Code of Regulations, title 16, section 1764 states:

No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.

DANGEROUS DRUGS

12. Section 4022 of the Code states, in pertinent part:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

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

...

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

13. **Omaprazole** (common trade name: **Prilosec**) is a dangerous drug as designated by Code section 4022. It is a proton-pump inhibitor used to treat acid reflux, ulcers, and gastroesophageal disorders.

14. **Atorvastatin** (common trade name: **Lipitor**) is a dangerous drug as designated by Code section 4022. It is a statin used to treat high cholesterol and triglyceride levels.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL SUMMARY

16. On or about July 3, 2019, Respondent filled a new omeprazole prescription for patient CG. Although the medication had not previously been dispensed to CG, CG was not offered or provided with a consultation.

17. On or about January 22, 2000, Respondent filled a new atorvastatin prescription for patient NM. Although the medication had not previously been dispensed to CG by Respondent and the prescription receipt read "Consult – New Drug," NH was not offered or provided with a consultation.

18. On or about January 22, 2000, a Board Inspector conducted an observation and inspection of Respondent's premises. While standing at the pharmacy counter, the Inspector observed a will call area where ready prescription bags with attached receipts were placed. The Inspector could clearly read the patients' names and medication names on the receipts.

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide Consultation)

19. Respondent is subject to discipline under Code section 4301, subdivision (o) and California Code of Regulations, title 16, section 1707.2, subdivision (a)(2) and/or (a)(3) in that, as described in paragraphs 16 and 17, Respondent failed to provide consultations to patients picking up new prescriptions.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Confidentiality of Prescriptions)

20. Respondent is subject to discipline under Code section 4301, subdivision (o), Civil Code section 56.10, and California Code of Regulations, title 16, section 1764 in that, as described in paragraph 18 above, Respondent exhibited the contents of patients' prescriptions to persons other than the patients or their authorized representatives.

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

DATED: February 17, 2021

Signature on File

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

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