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

In the Matter of the Accusation Against:

PREFERRED PHARMACY, INC.;
SCOTT LEROY MONTGOMERY, CEO
3303 Harbor Blvd., Ste. H7
Costa Mesa, CA 92626.

Pharmacy Permit No. PHY 54453

and

TONY HIEU LA
57 Abrazo Aisle
Irvine, CA 92614

Registered Pharmacist License No. RPH
73904

and

MICHAEL JEAN OLIVIE AGBASSI
320 Alamo Way
Oceanside, CA 92057

Registered Pharmacist License No. RPH
80700

Respondents.

Case No. 7019

**DEFAULT DECISION AND ORDER AS
TO PREFERRED PHARMACY, INC.
ONLY**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 31, 2022, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 7019 against Preferred Pharmacy, Inc. (Respondent Pharmacy) before the Board. (Accusation attached as Exhibit A.)

2. On or about June 1, 2016, the Board issued Pharmacy Permit Number PHY 54453 to Respondent Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation Number 7019 and will expire on June 1, 2023, unless renewed.

3. On September 2, 2022, Respondent Pharmacy was served by Certified and First Class Mail copies of the Accusation Number 7019, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent Pharmacy's address of record was and is: 3303 Harbor Boulevard, Ste. H7, Costa Mesa, California 92626.

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

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

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

6. The Board takes official notice of its records and the fact that Respondent Pharmacy failed to file a Notice of Defense within 15 days after service upon of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 7019.

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

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

6 8. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
9 as well as taking official notice of all of the investigatory reports, exhibits, and statements
10 contained therein on file at the Board's offices, regarding the allegations contained in Accusation
11 No. 7019, are separately and severally, found to be true and correct by clear and convincing
12 evidence.

13 9. The Board finds that the actual costs for Investigation and Enforcement are
14 \$113,391.00 as of October 20, 2022. Respondent Pharmacy is jointly and severally liable with
15 Respondent Tony Hieu La and Respondent Michael Jean Olivie Agbassi for those costs.

16 **DETERMINATION OF ISSUES**

17 1. Based on the foregoing findings of fact, Respondent Preferred Pharmacy, Inc. has
18 subjected its Pharmacy Permit Number PHY 54453 to discipline.

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

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

23 a. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
24 subdivision (o), for violating California Code of Regulations, title 16, section 1709.1, subdivision
25 (b), and Code section 4330, subdivision (b), in that Respondent Pharmacy utilized an unlicensed,
26 offsite call center to contact patients and prescribers; maintained fax servers to receive
27 prescriptions that the Pharmacist-in-Charge could neither access nor locate; and, used delivery
28 systems that the Pharmacist-in-Charge did not have knowledge of, access to, nor control over.

///

1 b. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,
2 subdivision (o), for violating Code section 4110, subdivision (a), in that Respondent Pharmacy
3 utilized an unlicensed entity, RXMSO, to run a call center to contact prescribers and patients to
4 obtain prescriptions and access pharmacy systems to upload patient and prescription information.
5 This location was not supervised by a pharmacist and was not licensed by the Board.

6 c. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
7 subdivisions (j) and (o), for violating California Code of Regulations, title 16, section 1764, and
8 California Civil Code section 56.10, subdivision (a), in that Respondent Pharmacy ran an
9 unlicensed call center that contacted prescribers and patients to obtain prescriptions,
10 demographics, and insurance information and accessed pharmacy systems to upload patient and
11 prescription information. The call center was not supervised by a pharmacist and was manned by
12 unlicensed staff.

13 d. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
14 subdivisions (j) and (o), for violating Code section 810, subdivision (b) and Penal Code section
15 550 subdivision (a)(6) and (7) in that Respondent Pharmacy knowingly made or caused to be
16 made false or fraudulent claims for payment of a health care benefit and knowingly submitted a
17 claim for a health care benefit that was not used by, or on behalf of, the claimant.

18 e. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
19 subdivisions (f), (g) and (o) in that Respondent Pharmacy test-billed insurance claims the patient
20 did not receive, billed patient's insurance without authorization, ran an unlicensed call center that
21 accessed patient prescription information, cold-called patients, and lied about cold calling
22 patients.

23 f. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,
24 subdivision (q), in that Respondent Pharmacy signed a written statement denying that patients
25 were cold-called, stating that pharmacy personnel delivered prescriptions despite prescriptions
26 being shipped hundreds of miles away, and denying that marketers had access to pharmacy
27 records despite marketers calling patients and prescribers regarding their prescriptions.

28 ///

g. Respondent Pharmacy is subject to disciplinary action under Code sections 4301, subdivision (o), in conjunction with Code section 4156 in that Respondent Pharmacy test-billed insurance claims for prescriptions the patients did not receive, billed patients' insurance without authorization, ran an unlicensed call center that accessed patient prescription information, cold-called patients, and lied about cold calling patients.

h. Respondent Pharmacy is subject to disciplinary action under Code sections 4301, subdivisions (f) and (o), and Code section 733, subdivision (a) and (b), in that Respondent policies and procedures confirmed the pharmacy would not ship a patient their prescription if the prescription did not meet a set profit margin, including if the patient was receiving a refill for a prescription previously filled by the pharmacy. In addition, Respondent Pharmacy declined to fill prescriptions for Patient SO after her insurance changed and her file noted “new insurance no longer meets margin.”

i. Respondent Pharmacy is subject to disciplinary action under Code sections 4301, subdivision (j), Code section 4169, subdivision (a)(1) and (2), and Health and Safety Code sections 111255 and 111295 in that Respondent sold, delivered, held, or offered for sale an adulterated drug.

j. Respondent Pharmacy is subject to disciplinary action under Code sections 4301 subdivision (j), Code section 4116, subdivision (a) and California Code of Regulations, title 16, section 1714, subdivision (d), in that non-pharmacist personnel had a key to the pharmacy premises, which allowed access to pharmacy computer systems and records an hour prior to the arrival of the pharmacist.

ORDER

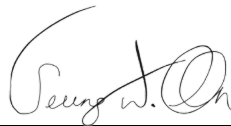
IT IS SO ORDERED that Pharmacy Permit Number PHY 54453, issued to Respondent Preferred Pharmacy, Inc., is revoked. Pursuant to Business and Professions Code section 4307, Preferred Pharmacy, Inc. shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee until and if Pharmacy Permit No. PHY 54453 is reinstated. Pursuant to Business and Professions Code section 4307, Scott Leroy Montgomery, Chief Executive Officer of Preferred Pharmacy, Inc. who had knowledge of and/or

1 knowingly participated in the conduct for which Pharmacy Permit No. PHY 54453 is disciplined,
2 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
3 associate or partner of a licensee until and if Pharmacy Permit No. PHY 54453 is reinstated.

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

9
10 This Decision shall become effective at 5:00 p.m. on January 11, 2023.

11 It is so ORDERED on December 12, 2022.

12
13 

14 Seung W. Oh, Pharm.D.
15 Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

16 83678718.DOCX
DOJ Matter ID:SD2020800973

17 Attachment:
18 Exhibit A: Accusation

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **PREFERRED PHARMACY, INC.;**
14 **SCOTT LEROY MONTGOMERY, CEO**
15 **3303 Harbor Blvd., Ste. H7**
Costa Mesa, CA 92626.

Case No. 7019

ACCUSATION

16 **Original Permit No. PHY 54453**

17 **and**

18 **TONY HIEU LA**
19 **57 Abrazo Aisle**
Irvine, CA 92614

20 **Registered Pharmacist License No. RPH**
21 **73904**

22 **and**

23 **MICHAEL JEAN OLIVIE AGBASSI**
24 **320 Alamo Way**
Oceanside, CA 92057

25 **Registered Pharmacist License No. RPH**
26 **80700**

27 Respondents.
28

1 **PARTIES**

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

4 2. On or about June 1, 2016, the Board issued Original Permit Number PHY 54453 to
5 Preferred Pharmacy, Inc. (Respondent Pharmacy), Scott Leroy Montgomery, CEO (Respondent
6 Montgomery). The Original Permit was in full force and effect at all times relevant to the charges
7 brought herein and will expire on June 1, 2023, unless renewed.

8 3. On or about November 3, 2015, the Board issued Registered Pharmacist License
9 Number RPH 73904 to Tony Hieu La (Respondent La). The Registered Pharmacist License was
10 in full force and effect at all times relevant to the charges brought herein and will expire on July
11 31, 2023, unless renewed.

12 4. On or about July 31, 2019, the Board issued Registered Pharmacist License Number
13 RPH 80700 to Michael Jean Olivie Agbassi (Respondent Agbassi). The Registered Pharmacist
14 License was in full force and effect at all times relevant to the charges brought herein and will
15 expire on September 30, 2022, unless renewed.

16 **JURISDICTION**

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

20 6. Section 4300 of the Code states:

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

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

24 (1) Suspending judgment.

25 (2) Placing him or her upon probation.

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

27 (4) Revoking his or her license.

28 ///

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

...

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

7. Section 4300.1 of the Code states:

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

8. Section 4307 of the Code states:

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

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

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

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

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall

1 be in addition to the board's authority to proceed under Section 4339 or any other
2 provision of law.

3 **STATUTORY PROVISIONS**

4 9. Section 733 of the Code states:

5 (a) A licentiate shall not obstruct a patient in obtaining a prescription drug or
6 device that has been legally prescribed or ordered for that patient. A violation of this
7 section constitutes unprofessional conduct by the licentiate and shall subject the
8 licentiate to disciplinary or administrative action by his or her licensing agency.

9 (b) Notwithstanding any other law, a licentiate shall dispense drugs and
10 devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or
11 prescription unless one of the following circumstances exists:

12 (1) Based solely on the licentiate's professional training and judgment,
13 dispensing pursuant to the order or the prescription is contrary to law, or the licentiate
14 determines that the prescribed drug or device would cause a harmful drug interaction
15 or would otherwise adversely affect the patient's medical condition.

16 (2) The prescription drug or device is not in stock. If an order, other than an
17 order described in Section 4019 , or prescription cannot be dispensed because the
18 drug or device is not in stock, the licentiate shall take one of the following actions:

19 (A) Immediately notify the patient and arrange for the drug or device to be
20 delivered to the site or directly to the patient in a timely manner.

21 (B) Promptly transfer the prescription to another pharmacy known to stock the
22 prescription drug or device that is near enough to the site from which the prescription
23 or order is transferred, to ensure the patient has timely access to the drug or device.

24 (C) Return the prescription to the patient and refer the patient. The licentiate
25 shall make a reasonable effort to refer the patient to a pharmacy that stocks the
26 prescription drug or device that is near enough to the referring site to ensure that the
27 patient has timely access to the drug or device.

28 (3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug
or device pursuant to an order or prescription. A licentiate may decline to dispense a
prescription drug or device on this basis only if the licentiate has previously notified
his or her employer, in writing, of the drug or class of drugs to which he or she
objects, and the licentiate's employer can, without creating undue hardship, provide a
reasonable accommodation of the licentiate's objection. The licentiate's employer
shall establish protocols that ensure that the patient has timely access to the
prescribed drug or device despite the licentiate's refusal to dispense the prescription
or order. For purposes of this section, "reasonable accommodation" and "undue
hardship" shall have the same meaning as applied to those terms pursuant to
subdivision (l) of Section 12940 of the Government Code.

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1 10. Section 810 of the Code states:

2 ...

3 (b) It shall constitute cause for revocation or suspension of a license or
4 certificate for a health care professional to engage in any conduct prohibited under
5 Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

6 11. Section 4040 of the Code states:

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

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

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

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

14 (C) The date of issue.

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

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

20 (F) If in writing, signed by the prescriber issuing the order, or the certified
21 nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who
22 issues a drug order pursuant to Section 2746.51 , 2836.1 , 3502.1 , or 3640.5 ,
23 respectively, or the pharmacist who issues a drug order pursuant to Section 4052.1 ,
24 4052.2 , or 4052.6.

25 (2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or
26 naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to
27 Section 2746.51 , 2836.1, 3502.1 , or 3460.5, by a certified nurse-midwife, nurse
28 practitioner, physician assistant, or naturopathic doctor licensed in this state, or
29 pursuant to Section 4052.1 , 4052.2 , or 4052.6 by a pharmacist licensed in this state.

30 (b) Notwithstanding subdivision (a), a written order of the prescriber for a
31 dangerous drug, except for any Schedule II controlled substance, that contains at least
32 the name and signature of the prescriber, the name and address of the patient in a
33 manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the
34 Health and Safety Code , the name and quantity of the drug prescribed, directions for
35 use, and the date of issue may be treated as a prescription by the dispensing
36 pharmacist as long as any additional information required by subdivision (a) is readily
37 retrievable in the pharmacy. In the event of a conflict between this subdivision and
38 Section 11164 of the Health and Safety Code , Section 11164 of the Health and
39 Safety Code shall prevail.

40 (c) "Electronic transmission prescription" includes both image and data
41 prescriptions. "Electronic image transmission prescription" means any prescription

1 order for which a facsimile of the order is received by a pharmacy from a licensed
2 prescriber. "Electronic data transmission prescription" means any prescription order,
other than an electronic image transmission prescription, that is electronically
transmitted from a licensed prescriber to a pharmacy.

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

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

7 12. Section 4059.5 of the Code states:

8 . . .

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

14 . . .

15 13. Section 4110 of the Code states:

16 (a) No person shall conduct a pharmacy in the State of California unless he or
17 she has obtained a license from the board. A license shall be required for each
pharmacy owned or operated by a specific person. A separate license shall be
18 required for each of the premises of any person operating a pharmacy in more than
one location. The license shall be renewed annually. The board may, by regulation,
19 determine the circumstances under which a license may be transferred.

20 . . .

21 14. Section 4116 of the Code states:

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

27 . . .
28

1 15. Section 4156 of the Code states:

2 A pharmacy corporation shall not do, or fail to do, any act where doing or
3 failing to do the act would constitute unprofessional conduct under any statute or
4 regulation. In the conduct of its practice, a pharmacy corporation shall observe and
 be bound by the laws and regulations that apply to a person licensed under this
 chapter.

5 16. Section 4169 of the Code states:

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

7 (1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous drugs or
8 dangerous devices at wholesale with a person or entity that is not licensed with the
 board as a wholesaler, third-party logistics provider, or pharmacy.

9 (2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or
10 reasonably should have known were adulterated, as set forth in Article 2 (commencing
11 with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety
 Code Section 4301 of the Code states:

12 17. Section 4301 of the Code states:

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

15 ...

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

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

20 ...

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

22 ...

23 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violation of or conspiring to violate any provision or term of this chapter
25 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.

26 ...

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

1 18. Section 4330 of the Code states:

2 ...

3 (b) Any nonpharmacist owner who commits any act that would subvert or tend
4 to subvert the efforts of the pharmacist in charge to comply with the laws governing
the operation of the pharmacy is guilty of a misdemeanor.

5 ...

6 **REGULATORY PROVISIONS**

7 19. California Code of Regulations, title 16, section 1709.1 states:

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

10 (b) The pharmacy owner shall vest the pharmacist-in-charge with adequate
authority to assure compliance with the laws governing the operation of a pharmacy.

11 ...

12 20. California Code of Regulations, title 16, section 1714 states:

13 ...

14 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and
16 cold running water for pharmaceutical purposes.

17 (d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
18 diversion of dangerous drugs and devices, and records for such drugs and devices.
Possession of a key to the pharmacy where dangerous drugs and controlled
19 substances are stored shall be restricted to a pharmacist.

20 ...

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

22 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
23 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
24 practitioner then caring for the patient, another licensed pharmacist serving the

25 ///

26 ///

27 ///

CODE OF FEDERAL REGULATIONS

22. Title 42, Code of Federal Regulations, (CFR) section 424.57 states:

...

c) *Application certification standards.* The supplier must meet and must certify in its application for billing privileges that it meets and will continue to meet the following standards:

...

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

PENAL CODE SECTIONS

23. California Penal Code section 550 states:

...

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

...

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

...

CALIFORNIA CIVIL CODE SECTION

24. California Civil Code section 56.10, subdivision (a) states:

(a) A provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

HEALTH AND SAFETY CODE

25. California Health and Safety Code section 111255 states:

Any drug or device is adulterated if it has been produced, prepared, packed, or held under conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

26. California Health and Safety Code section 111295 states:

It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated.

COST RECOVERY

27. Section 125.3 of the Code 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

28. Respondent Pharmacy is a pharmacy located in Costa Mesa, California. Respondent Pharmacy primarily dispenses diabetic test strips, test meters, lancets and lancing devices, and topical creams. The Board received multiple complaints alleging Preferred Pharmacy cold-called patients in an attempt to fill prescriptions, and/or filled patient prescriptions, without authorization. Board investigations confirmed that Respondent Pharmacy cold-called patients, test-billed prescriptions, filled prescriptions without patient knowledge, and utilized an unlicensed call center to solicit potential patients to fill prescriptions.

29. Respondent La was the Pharmacist in Charge (PIC) of Respondent Pharmacy from February 1, 2017 to October 7, 2019.

30. Respondent Agbassi was the PIC of Respondent Pharmacy since October 3, 2019 until present.

31. Respondent Montgomery owns and operates a variety of businesses and pharmacies including Respondent Pharmacy, located at 2202 Harbor Blvd., Suite D, Costa Mesa, California. Respondent Montgomery is not a licensed pharmacist. RXMSO is an entity associated with

Respondent Montgomery and is located in the same building complex as Respondent Pharmacy. The Board received information that RXMSO had call centers located in California, Florida, and the Philippines. RXMSO hired affiliates that obtained patient information and sold the information to RXMSO.

COMPLAINTS TO THE BOARD

32. On or around April 4, 2018, the Board received a complaint from Pharmacist MK on behalf of a homeless patient. The patient required daily insulin and any delay in the ability to test her blood sugar could result in hospitalization. The patient learned that she could not refill her prescription for diabetic test strips through her insurance because Respondent Pharmacy previously completed and billed her insurance for the prescription test strips. The patient did not request nor receive diabetic test strips from Respondent Pharmacy and had no knowledge that the prescription was placed on her behalf. Pharmacist MK researched Respondent Pharmacy's location and determined that Respondent Pharmacy was approximately 150 miles away from the patient. Pharmacist MK called Respondent Pharmacy and was informed that Respondent Pharmacy received signature confirmation for delivery. Pharmacist MK believed that this signature could not be the patient's signature as the patient was homeless.

33. On or about September 21, 2018, the Board received an anonymous complaint alleging that a patient received a telephone call from Respondent Pharmacy. The anonymous complainant stated that the caller asked the patient to describe their pain and to provide the name of the patient's care provider so that Respondent Pharmacy could call the provider and initiate prescriptions. The patient did not know how Respondent Pharmacy received the patient's information and did not provide the requested information.

34. On or about April 17, 2020, the Board received a complaint from a former employee of RXMSO. The employee, identified as YM, believed Respondent Montgomery operated RXMSO. YM confirmed RXMSO worked with approximately seven pharmacies including Respondent Pharmacy. YM stated that Respondent Pharmacy held patient information without patient authorization. YM alleged that RXMSO employed call center agents in the Philippines, Florida, and California. None of the agents was a licensed pharmacist or pharmacy technician.

1 YM stated that the call centers initiated contact with prospective patients and identified
2 themselves as “with the Health Care Department.” The agent offered prospective patients such
3 things as cookbooks or coupons for free meals to obtain patient information, including the
4 patient’s full name, date of birth, treating physician information, and last four numbers of the
5 patient’s social security number.

6 35. On or around September 9, 2020, the Board received an online complaint from MI, a
7 nurse practitioner for Sutter Health. MI stated that he received a prescription request for a
8 Medicare patient, TW, from Respondent Pharmacy. MI indicated that the patient had never been
9 to, nor requested services from, Respondent Pharmacy.

10 **BOARD INVESTIGATIONS**

11 36. Based on the complaints, the Board conducted investigations and inspections of
12 Respondent Pharmacy.

13 37. On or around March 6, 2019, Board Inspectors BM and CW conducted an inspection
14 of Respondent Pharmacy located at 3303 Harbor Blvd., Suite H7, Costa Mesa, California.
15 Respondent La assisted in the inspection. The pharmacy stocked UPS boxes and UPS label
16 sleeves. The pharmacy’s stock was comprised mostly of topical creams and diabetic products.
17 The pharmacy Daily Fill Log appeared to be mostly diabetes supplies, including over the counter
18 alcohol pads, lancets, meters, and strips. Inspector BM noted that one computer monitor had a
19 screen that stated, “Allow Remote Control” and “Control Remote Computer.” Respondent La
20 confirmed that Respondent Pharmacy held an Arizona non-resident pharmacy license. Board
21 Inspector BM viewed an expired Nevada Pharmacy license on the wall.

22 38. During the inspection, Board Inspectors BM and CW issued corrections for the
23 following violations:

24 a.) California Code of Regulations 1707.5(d), for the pharmacy not having
25 interpretive services;

26 b.) California Code of Regulations 1714(c), for the pharmacy not having a sink
27 with hot water;

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1 c.) California Code of Regulations 1715.65(c), for the pharmacy not having
2 completed an inventory reconciliation of Schedule II controlled substances; and

3 d.) Business and Professions Code 4070(a), for e-fax prescriptions not being
4 reduced to hard copy form and maintained.

5 39. As part of the inspection, Inspector BM interviewed Respondent La who stated the
6 following:

7 a.) Respondent Montgomery knew more about the pharmacy procedures than
8 Respondent La.

9 b.) Respondent La did not know about the marketing procedures and did not know
10 if Respondent Pharmacy cold-called patients.

11 c.) Respondent Pharmacy received prescriptions via e-script or e-fax and
12 automatically placed patient prescriptions on auto refill.

13 d.) E-scripts came directly from the prescribers via a Faxage server.¹ Inspector
14 BM could not locate printed E-faxed prescriptions.

15 e.) Respondent Pharmacy used a delivery driver and did not mail prescriptions.
16 Approximately half of Respondent's patients walked into the premises to fill prescriptions and
17 prescriptions were set for auto refills. Respondent La did not know exactly how the prescriptions
18 were delivered to locations several hours from Respondent Pharmacy's location.

19 40. Inspector BM asked Respondent La to log into Respondent Pharmacy's computer
20 system. Respondent La could not log in to the fax server and called Respondent Montgomery.
21 Once Respondent La gained access, Board Inspector BM reviewed prescriptions received by fax.
22 The system organized prescriptions by the prescriber fax number and date/time. While reviewing
23 Respondent Pharmacy's prescriptions, Board Inspector BM found:

24 a.) Respondent Pharmacy stocked preprinted prescriptions that appeared to be
25 created by Respondent Pharmacy or a marketing company and included a fine print disclaimer

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27 ¹ A faxage server is a third-party faxing vendor fax that collects the prescriptions from doctors
28 which then gets entered into a computer system, instead of the prescription being sent directly to the
pharmacy.

1 that the prescriber's signature authorized the pharmacy to "substitute as necessary any
2 comparable cream formulation, patch, gel, or kit."

3 b.) Inspector BM pulled two examples of preprinted prescriptions. One
4 prescription was for Patient RD for lidocaine 5% ointment with three refills, and the other
5 prescription was for CP for calcipotriene 0.005% cream with 5 refills. The prescriptions appeared
6 to be created by Respondent Pharmacy or a marketing group and requested the prescription be
7 faxed back to an unidentified toll free number. The prescriptions contained a disclaimer in fine
8 print at the bottom that indicated that the prescriber's signature authorized the pharmacy to
9 "substitute as necessary any comparable cream formulation, patch, gel, or kit."

10 c.) A review of Patient TW's file included a pre-printed fax that appeared to have
11 been created by Respondent Pharmacy, although the prescription did not include the pharmacy
12 name. The prescription included preprinted information such as the patient name, address, date of
13 birth, and the prescriber name, address, phone number, fax number, and National Provider
14 Identifier (NPI). The prescription advised the prescriber to fax the prescription back to an
15 unidentified toll free number. The prescription contained generic prescriptions of diabetic test
16 strips, lancets, alcohol prep pads, lancet device, glucose meter, control solution, and syringes, all
17 with a 90-day quantity or single device listed in the quantity. The prescription included a section
18 for refills, but three refills appeared to be already electronically circled on the prescription. The
19 prescription was signed and dated June 24, 2017, however a signature log for the patient was not
20 retrievable during inspection. Patient TW resided in Bakersfield. Respondent La stated that
21 distant deliveries used a different system and that he did not have access to that system.

22 d.) Respondent La could not pull additional sample signatures for delivery when
23 asked to do so by Board Inspector BM.

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Marketing Relationship with RXMSO

41. RXMSO is an entity associated with Respondent Montgomery and is located in the same building complex as Respondent Pharmacy. RXMSO includes a call center that contacted prescribers and patients to obtain prescriptions, demographics, and insurance information and access pharmacy systems to upload patient and prescription information on behalf of Respondent Pharmacy. There was no pharmacist overseeing RXMSO.

42. RXMSO company training documents included a coverage check process, a script for calling patients, RXMSO training, and a store contact list. The training document described the “Doc Chase” process, where after the pharmacy “approves a prescription,” the RXMSO employee would attempt to obtain a prescription from the provider. Training documents included a prepared script for the employee to use when calling the prescriber. The training material instructed the employee to attempt to obtain a prescription by contacting the prescriber twice a day for approximately seven days. The documents described another process, the “Reverse Que,” in which the agent would reverse or “credit return” billed prescriptions and then rebill them. The materials used by RXMSO were provided to employees of Respondent Pharmacy.

43. Beginning with the COVID-19 pandemic, call center employees worked from home. RXMSO affiliates cold-called patients and identified themselves as from the “health department.” Once the affiliates obtained patient information, “coverage checkers” verified prescription profitability. If patients requested refills of prescriptions deemed “not profitable” to the pharmacy, the pharmacy would inform the patient “their insurance was telling the pharmacy to have the patient use a local community pharmacy” even though the pharmacy had not spoken with the patient’s insurance company. If the claim was approved, the patient would move to the “doc chase” department. Members of the “doc chase” department would call prescribers and inform the prescriber that they previously spoke with the patient, even though the “doc chase” employee had not spoken with the patient. The “doc chase” employees received commissions based on how many prescriptions they obtained.

44. On or around August 19, 2020, Board Inspectors traveled to Respondent Pharmacy to tour the call center and to conduct a follow up interview of Respondent Agbassi. Respondent

1 Agbassi indicated that the call center ceased onsite operations and that he did not have access to
2 the call center space. Respondent Agbassi stated that the company recently downsized and had
3 only one call center employee. Respondent Agbassi believed Respondent Montgomery previously
4 had access to the call center and oversaw the operations on occasion.

5 45. During the Board investigator's interview with Respondent Agbassi, Respondent
6 Montgomery arrived. Inspector BM interviewed Respondent Montgomery. Respondent
7 Montgomery admitted that Respondent Pharmacy bought patient leads from a marketer, or
8 Management Services Organization in this case, RXMSO. The call center employed
9 approximately five employees who worked from home due to COVID-19 shelter-in-place orders.

10 **Test Billing and Solicitation of Prescriptions**

11 46. A review of Respondent Pharmacy's data indicated as follows:

12 a.) The data was comprised of approximately 50,000 prescriptions.

13 b.) Respondent Pharmacy marked approximately 31,680 prescriptions as
14 "completed."

15 c.) Respondent Pharmacy reversed billing in approximately 18,318 prescriptions,
16 resulting in approximately 37% of prescriptions being cancelled.

17 d.) Respondent Pharmacy data reflected that there were approximately 5,333
18 patients who only had prescriptions that were in cancelled status, indicating that Respondent
19 Pharmacy typed and attempted to process prescriptions for 5,333 patients for whom Respondent
20 Pharmacy had never filled prescriptions. This is a red flag that indicated Respondent test billed
21 prescriptions, that is, Respondent Pharmacy submitted fraudulent insurance claims to determine if
22 the prescription would result in a profit for the pharmacy.

23 e.) Data from February 1, 2017, through October 7, 2019, indicated that
24 Respondent La verified approximately 30,323 prescriptions as PIC, while Respondent Agbassi
25 verified approximately 976 prescriptions as PIC. Over 18,000 prescriptions did not list a
26 pharmacist in the verified by column, indicating no pharmacist reviewed or dispensed the
27 prescription.
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f.) Although Respondent La alleged that Respondent Pharmacy only utilized a delivery driver for delivering prescriptions, Respondent Pharmacy held prescriptions for patients from 821 separate California cities. Respondent Pharmacy only completed approximately 30 prescriptions in Costa Mesa, where Respondent Pharmacy was located, representing 0.11% of Respondent's prescriptions. The top cities where Respondent Pharmacy completed prescriptions are as follows:

Patient City	Distance from Costa Mesa (approximate miles)	Count of Rx Number	Percentage of Total Rx's
Sacramento	427	1894	5.98%
Los Angeles	41	1591	5.02%
Fresno	261	1294	4.08%
San Diego	87	850	2.68%
Bakersfield	154	814	2.57%
Long Beach	28	646	2.04%
Modesto	354	592	1.87%
Lancaster	113	549	1.73%
San Bernardino	56	424	1.34%
Victorville	88	413	1.30%

47. Dr. LM appeared in approximately 2,489 prescriptions. Of these prescriptions, approximately 2,445 prescriptions were cancelled and only 44 were completed. Dr. LM's address of record was approximately fifty miles from the pharmacy. The patients listed as Dr. LM's "patients" resided throughout the state and not near Respondent Pharmacy nor Dr. LM's office. Dr. LM's office confirmed via questionnaire that out of the approximately 2,445 prescriptions provided by Inspector BM, only 19 of those patients (~~27 total prescriptions~~) were under Dr. LM's care. The remaining approximately 2,171 separate patients had prescriptions created by Preferred Pharmacy that were not patients of Dr. LM. Thus, approximately 2,426 separate prescriptions were created by Preferred Pharmacy using Dr. LM's name. Dr. LM stated that he had not authorized the pharmacy to create prescriptions for the patients that were not his patients. Dr. LM did note that he had sent some prescriptions to the pharmacy for the 19 patients under his care but stated that Respondent Pharmacy test billed approximately 2,426 prescriptions under Dr. LM's name without his authorization.

1 48. Dr. DS confirmed that Respondent Pharmacy test billed 56 prescriptions that were not
2 authorized. Dr. DS stated that he was not familiar with Respondent Pharmacy, did not prescribe
3 these types of prescriptions (test strips, lancets, alcohol pads), had not authorized Respondent
4 Pharmacy to test bill prescriptions under his name, and that the patients on the list of prescriptions
5 provided were not his patients. Dr. DS's office confirmed 56 prescriptions had not been
6 authorized by the prescriber.

7 49. Dr. DD confirmed that he did not authorize approximately 19 prescriptions that were
8 test billed by Respondent Pharmacy. Dr. DD retired on January 25, 2019, and he confirmed that
9 he did not write any prescriptions after that date. Additionally, Dr. DD stated that he was not
10 familiar with Respondent Pharmacy, was located more than 500 miles from Respondent
11 Pharmacy, did not perform telemedicine, and only saw patients in person. Thus, it was unlikely
12 that he authorized any prescriptions for patients located outside of Paradise, California.

13 50. An employee of Respondent Pharmacy and RXMSO confirmed that Respondent
14 Pharmacy test billed prescriptions to ensure that the prescriptions were profitable. The employee
15 explained that if Respondent Pharmacy could make \$35.00 from the patient's prescription, then it
16 would pursue obtaining the prescription. The employee confirmed that if the patient wanted a
17 refill or a prescription but the profit was less than \$35.00, or if the patient had a high copay,
18 Respondent Pharmacy would lie to the patient and tell the patient that their insurance informed
19 Respondent Pharmacy to have the patient use a local community pharmacy instead.

20 51. Inspector BM contacted patients that received prescriptions from Respondent
21 Pharmacy. Responding patients indicated that Respondent Pharmacy billed their insurance in
22 some instances, that they received cold calls in an attempt to obtain authorization to bill and
23 obtain prescriptions for the patient, that they had not contacted Respondent Pharmacy directly to
24 fill prescriptions. By way of example, the following patients stated the following:

25 a.) Patient DJ stated that she received supplies from Respondent Pharmacy that she
26 had not requested. She had not been to the pharmacy and did not know how Respondent
27 Pharmacy obtained her information. Patient DJ confirmed that she was cold-called by
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1 Respondent Pharmacy. She further confirmed that she did not authorize Respondent Pharmacy to
2 bill her insurance.

3 b.) Patient RP indicated that she received prescriptions from Respondent Pharmacy
4 but that she had not been to, did not provide a prescription to, and did not know how Respondent
5 Pharmacy obtained her contact information. Patient RP confirmed that Respondent Pharmacy
6 cold-called her.

7 c.) Patient JM stated that he had not received or requested prescriptions from
8 Respondent Pharmacy. Patient JM stated that he did not authorize Respondent Pharmacy to bill
9 his insurance. Patient JM's prescription was listed as "cancelled" in the computer system.

10 d) Respondent Pharmacy declined to fill a prescription for S.O. after her insurance
11 changed and the pharmacy noted "New Insurance no longer meets margin, will D/C Patient In
12 Pioneers" according to a screenshot provided.

13 52. On or around November 21, 2019, Respondent La participated in a conference call
14 with Board Inspectors and confirmed that Respondent Pharmacy used "RXMSO" employees
15 known as "chasers." Contrary to what Respondent La previously stated, Respondent Pharmacy
16 mailed about 90% of the prescriptions. Patients called and asked why they received prescriptions
17 from Respondent Pharmacy. "RXMSO" staff that called these patients were different from the
18 "chasers." Respondent Pharmacy sometimes received returns from patients. Those prescriptions
19 were returned for destruction and reversed from billing. Respondent La explained the
20 prescription would be filled typically by him, given to the clerk who would label it for shipping,
21 and the driver would collect the boxes for delivery via "DCS."

22 **Adulterated Prescriptions**

23 53. Respondent Pharmacy accepted prescriptions returned by patients. If a patient
24 returned a prescription, Respondent Agbassi would reverse the insurance charge and examine the
25 product. If the product appeared intact and still sealed, Respondents would re-dispense the
26 product despite having no knowledge of the conditions in which the products were kept.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unauthorized Disclosure of Prescription Information**

3 **Against Respondent Pharmacy and Respondent Montgomery)**

4 57. Respondents are subject to disciplinary action under Code sections 4301 subdivisions
5 (j) and (o), for violating California Code of Regulations, title 16, section 1764, and California
6 Civil Code section 56.10, subdivision (a), in that Respondent Pharmacy and Respondent
7 Montgomery ran an unlicensed call center that contacted prescribers and patients to obtain
8 prescriptions, demographics, and insurance information and accessed pharmacy systems to
9 upload patient and prescription information. The call center was not supervised by a pharmacist
10 and was manned by unlicensed staff, as described above in paragraphs 28 through 54, which are
11 incorporated herein by reference.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Insurance Fraud Against All Respondents)**

14 58. Respondents are subject to disciplinary action under Code sections 4301 subdivisions
15 (j) and (o), for violating Code section 810, subdivision (b) and Penal Code section 550
16 subdivision (a)(6) and (7), in that Respondent Pharmacy knowingly made or caused to be made
17 any false or fraudulent claim for payment of a health care benefit and knowingly submitted a
18 claim for a health care benefit that was not used by, or on behalf of, the claimant. Specifically,
19 and as more fully set forth in paragraphs 46 through 52 above, between February 1, 2017, and
20 November 7, 2019, Respondents cancelled 18,318 prescriptions in the computer system and had
21 approximately 5,333 patients who only had prescriptions that were in the cancelled status (the
22 pharmacy entered a prescription for them but never dispensed drugs or products). These 18,318
23 claims represented approximately 37% of Respondent Pharmacy's typed prescriptions and
24 suggests that Respondent Pharmacy was test-billing and soliciting prescriptions it knew it would
25 not be dispensing. Additionally, patients confirmed that Respondent Pharmacy cold-called
26 patients and billed their insurance either without the patient's authorization and/or without the
27 patient requesting prescriptions be filled by Respondent Pharmacy.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct Against All Respondents)**

3 59. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
4 subdivisions (f), (g) and (o) in that Respondent Pharmacy test-billed insurance claims the patient
5 did not receive, billed patient's insurance without authorization, ran an unlicensed call center that
6 accessed patient prescription information, cold-called patients, and lied about cold calling
7 patients, as described above in paragraphs 44 through 52, which are incorporated herein by
8 reference.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Subverting an Investigation**

11 **Against Respondent Pharmacy, Respondent Montgomery and Respondent La)**

12 60. Respondent Pharmacy and Respondent Montgomery are subject to disciplinary action
13 under Code sections 4301, subdivision (q), in that Respondent Pharmacy, Respondent
14 Montgomery and Respondent La each signed a written statement denying that patients were cold-
15 called, stating that pharmacy personnel delivered prescriptions despite prescriptions being
16 shipped hundreds of miles away, and denying that marketers had access to pharmacy records
17 despite marketers calling patients and prescribers regarding their prescriptions, as described
18 above in paragraphs 28 through 54, which are incorporated herein by reference.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct by a Corporation**

21 **Against Respondent Pharmacy and Respondent Montgomery)**

22 61. Respondent Pharmacy and Respondent Montgomery are subject to disciplinary action
23 under Code sections 4301, subdivision (o), in conjunction with Code section 4156 in that
24 Respondent Pharmacy and Respondent Montgomery test-billed insurance claims for prescriptions
25 the patients did not receive, billed patients' insurance without authorization, ran an unlicensed
26 call center that accessed patient prescription information, cold-called patients, and lied about cold
27 calling patients, as described above in paragraphs 28 through 54, which are incorporated herein
28 by reference.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Obstruction of Prescriptions Against All Respondents)**

3 62. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
4 (f) and (o), and Code section 733, subdivision (a) and (b), in that Respondents' policies and
5 procedures confirmed the pharmacy would not ship a patient their prescription if the prescription
6 did not meet a set profit margin, including if the patient was receiving a refill for a prescription
7 previously filled by the pharmacy. In addition, Respondents declined to fill prescriptions for
8 Patient SO after her insurance changed and her file noted "new insurance no longer meets
9 margin," as described above in paragraphs 28 through 54, which are incorporated herein by
10 reference.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Adulterated Drugs Against all Respondent Pharmacy and Respondent Agbassi)**

13 63. Respondent Pharmacy, Respondent Montgomery and Respondent Agbassi are subject
14 to disciplinary action under Code sections 4301, subdivision (j), Code section 4169, subdivision
15 (a)(1) and (2), and Health and Safety Code sections 111255 and 111295 in that Respondents sold,
16 delivered, held, or offered for sale an adulterated drug, as described above in paragraphs 28
17 through 54, which are incorporated herein by reference.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Lack of Pharmacy Security**

20 **Against Respondent Pharmacy and Respondent Agbassi)**

21 64. Respondent Pharmacy, Respondent Montgomery and Respondent Agbassi are subject
22 to disciplinary action under Code sections 4301 subdivision (j), Code section 4116, subdivision
23 (a) and California Code of Regulations, title 16, section 1714, subdivision (d), in that non-
24 pharmacist personnel had a key to the pharmacy premises, which allowed access to pharmacy
25 computer systems and records an hour prior to the arrival of the pharmacist, as described above in
26 paragraph 54, which is incorporated herein by reference.

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OTHER MATTERS

65. Pursuant to Section 4307, if Pharmacy Permit Number PHY 54453 issued to Preferred Pharmacy, Inc. is suspended, revoked or placed on probation, Respondent Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

66. Pursuant to Section 4307, if Pharmacy Permit Number PHY 54453 issued to Preferred Pharmacy, Inc. is suspended, revoked or placed on probation, and Respondent Agbassi, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 54453 was revoked, suspended, or placed on probation, Respondent Agbassi shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

67. Pursuant to Section 4307, if Pharmacy Permit Number PHY54453 issued to Preferred Pharmacy, Inc. is suspended, revoked or placed on probation, and Respondent Montgomery, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 54453 was revoked, suspended, or placed on probation, Respondent Montgomery shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

68. Pursuant to Section 4307, if Pharmacist License Number RPH 73904 issued to Tony Hieu La is suspended or revoked, Respondent La shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

69. Pursuant to Section 4307, if Pharmacist License Number RPH 80700 issued to Michael Jean Olivie Agbassi is suspended or revoked, Respondent Agbassi shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 54453, issued to Preferred Pharmacy, Inc.; Scott Leroy Montgomery, CEO;

2. Revoking or suspending Registered Pharmacist License Number RPH 73904, issued to Tony Hieu La;

3. Revoking or suspending Registered Pharmacist License Number RPH 80700, issued to Michael Jean Olivie Agbassi;

4. Ordering Tony Hieu La, Michael Jean Olivier Agbassi and Scott Leroy Montgomery 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;

5. Prohibiting Preferred Pharmacy, Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 54453 is placed on probation or until Pharmacy Permit Number PHY 54453 is reinstated if Pharmacy Permit Number PHY 54453 issued to Preferred Pharmacy is revoked;

6. Prohibiting Scott Montgomery from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 54453 is placed on probation or until Pharmacy Permit Number PHY 54453 is reinstated if it is revoked;

7. Prohibiting Tony Hieu La from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Registered Pharmacist License Number RPH 73904 is placed on probation or until Registered Pharmacist License Number RPH 73904 is reinstated if it is revoked; and,

8. Prohibiting Michael Jean Olivie Agbassi from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Registered Pharmacist License Number RPH 80700 is placed on probation or until Registered Pharmacist License Number RPH 80700 is reinstated if it is revoked; and,

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

DATED: 8/31/2022

Signature on File

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