

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

In the Matter of the First Amended Accusation Against:

**PACIFICO WEST RX INC., dba
PURESCIENCE RX,
CINDY JUSTICE, OWNER AND PRESIDENT,
Pharmacy Permit No. PHY 54618;**

**BRETT ROBERSON,
Registered Pharmacist License No. RPH 54390;**

and

**ASHOK POPAT,
Registered Pharmacist License No. RPH 39954,**

Respondents.

Agency Case No. 7073

OAH No. 2022080740

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 19, 2023.

It is so ORDERED on March 20, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 STEPHEN A. ARONIS
Deputy Attorney General
4 State Bar No. 204995
600 West Broadway, Suite 1800
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6 San Diego, CA 92186-5266
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Attorneys for Complainant
8

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 7073

OAH No. 2022080740

13 **PACIFICO WEST RX INC.,**
14 **DBA PURESCIENCE RX;**
15 **CINDY JUSTICE, OWNER AND**
PRESIDENT
16 **15644 Pomerado Rd., Ste. 303**
Poway, CA 92064

STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO BRETT
ROBERSON ONLY

17 **Pharmacy Permit No. PHY 54618,**

18 **BRETT ROBERSON**
19 **711 E. Coronado Rd.**
Phoenix, AZ 85006

20 **Registered Pharmacist License No. RPH**
54390, and

21 **ASHOK POPAT**
22 **630 Crestview Dr.**
Diamond Bar, CA 91765

23 **Registered Pharmacist License No. RPH**
24 **39954**

25 Respondents.
26

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

1 **PARTIES**

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

6 2. Brett Ashley Roberson (Respondent) is represented in this proceeding by attorney
7 Nicole Weil, Esq., whose address is 9474 Kearny Villa Rd., Suite 101, San Diego, CA 92126.

8 3. On or about March 25, 2003, the Board issued Registered Pharmacist License
9 Number RPH 54390 to Brett Roberson. Brett Roberson was the Pharmacist-in-Charge (PIC) at
10 PureScience Rx in Poway, California, between February 21, 2017 and June 15, 2020. The
11 Registered Pharmacist License was in full force and effect at all times relevant to the charges
12 brought herein, and will expire on April 30, 2023, unless renewed.

13 **JURISDICTION**

14 4. First Amended Accusation No. 7073 was filed before the Board, and is currently
15 pending against Respondent. The First Amended Accusation and all other statutorily required
16 documents were properly served on Respondent on April 14, 2022. Respondent timely filed its
17 Notice of Defense contesting the First Amended Accusation. A copy of First Amended
18 Accusation No. 7073 is attached as Exhibit A and incorporated by reference.

19 **ADVISEMENT AND WAIVERS**

20 5. Respondent has carefully read, fully discussed with counsel, and understands the
21 charges and allegations in First Amended Accusation No. 7073. Respondent has also carefully
22 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of
23 License and Order.

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

1 and all other rights accorded by the California Administrative Procedure Act and other applicable
2 laws.

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

5 **CULPABILITY**

6 8. Respondent understands that the charges and allegations in First Amended
7 Accusation No. 7073, if proven at a hearing, constitute cause for imposing discipline upon his
8 Registered Pharmacist License Number RPH 54390.

9 9. For the purpose of resolving the First Amended Accusation without the expense and
10 uncertainty of further proceedings, and considering that Respondent is currently residing and
11 working in the state of Arizona, Respondent agrees that, at a hearing, Complainant could establish
12 a factual basis for the charges in the First Amended Accusation and that those charges constitute
13 cause for discipline. Respondent hereby gives up his right to contest those causes for discipline
14 based on those charges in the First Amended Accusation.

15 10. Respondent understands that by signing this stipulation, he enables the Board to issue
16 an order accepting the surrender of his Registered Pharmacist License Number RPH 54390
17 without further process.

18 **CONTINGENCY**

19 11. This stipulation shall be subject to approval by the Board. Respondent understands
20 and agrees that counsel for Complainant and the staff of the Board may communicate directly
21 with the Board regarding this stipulation and surrender, without notice to or participation by
22 Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that he
23 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
24 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
25 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
26 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
27 be disqualified from further action by having considered this matter.

28 ///

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

ORDER

IT IS HEREBY ORDERED that Original Permit Number No. PHY 54618, issued to Respondent Brett Ashley Roberson, is surrendered and accepted by the Board.

1. The surrender of Respondent's Registered Pharmacist License Number RPH 54390 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board. Respond understands and agrees that for purposes of Business and Professions Code Section 4307, this surrender shall be construed the same as revocation.

2. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

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

4. Respondent may not apply for any new or reinstated license with the Board for three (3) years from the effective date of the Board's Decision and Order. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application. Respondent must comply with all the laws, regulations and

1 procedures for reinstatement of a revoked or surrendered license in effect at the time the petition
2 is filed, and all of the charges and allegations contained in First Amended Accusation No. 7073
3 shall be deemed to be true, correct and admitted by Respondent when the Board determines
4 whether to grant or deny the petition.

5 5. Respondent shall pay the Board its costs of investigation and enforcement in the
6 amount of \$15,000.00 prior to submitting any application for the issuance of a new or reinstated
7 license.

8 6. If Respondent should ever apply or reapply for a new license or certification, or
9 petition for reinstatement of a license, by any other health care licensing agency in the State of
10 California, all of the charges and allegations contained in First Amended Accusation, No. 7073
11 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
12 of Issues or any other proceeding seeking to deny or restrict licensure.

13 **ACCEPTANCE**

14 I have carefully read the above Stipulated Surrender of License and Order and have fully
15 discussed it with my attorney Nicole Weil. I understand the stipulation and the effect it will have
16 on my Registered Pharmacist License Number RPH 54390. I enter into this Stipulated Surrender
17 of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Board of Pharmacy.

19
20 DATED: _____

BRETT ASHLEY ROBERSON
Respondent

21
22
23 I have read and fully discussed with Brett Ashley Roberson the terms and conditions and
24 other matters contained in this Stipulated Surrender of License and Order. I approve its form and
25 content.

26 DATED: _____

NICOLE WEIL, Esq.,
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

STEPHEN A. ARONIS
Deputy Attorney General
Attorneys for Complainant

SD2020801964

1 procedures for reinstatement of a revoked or surrendered license in effect at the time the petition
2 is filed, and all of the charges and allegations contained in First Amended Accusation No. 7073
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4 whether to grant or deny the petition.


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6 amount of \$15,000.00 prior to submitting any application for the issuance of a new or reinstated
7 license.

8 6. If Respondent should ever apply or reapply for a new license or certification, or
9 petition for reinstatement of a license, by any other health care licensing agency in the State of
10 California, all of the charges and allegations contained in First Amended Accusation, No. 7073
11 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
12 of Issues or any other proceeding seeking to deny or restrict licensure.

13 **ACCEPTANCE**

14 I have carefully read the above Stipulated Surrender of License and Order and have fully
15 discussed it with my attorney Nicole Weil. I understand the stipulation and the effect it will have
16 on my Registered Pharmacist License Number RPH 54390. I enter into this Stipulated Surrender
17 of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Board of Pharmacy.

19
20 DATED: 02/10/2023


Brett Roberson [Feb 10, 2023 12:36 MST]
BRETT ASHLEY ROBERSON
Respondent

22
23 I have read and fully discussed with Brett Ashley Roberson the terms and conditions and
24 other matters contained in this Stipulated Surrender of License and Order. I approve its form and
25 content.

26 DATED: 02/10/2023


NICOLE WEIL, Esq.,
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: February 10, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



STEPHEN A. ARONIS
Deputy Attorney General
Attorneys for Complainant

SD2020801964

Exhibit A

First Amended Accusation No. 7073

1 ROB BONTA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 STEPHEN A. ARONIS
Deputy Attorney General
4 State Bar No. 204995
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9451
7 Facsimile: (619) 645-2581
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

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15 **DBA PURESCIENCE RX;**
16 **CINDY JUSTICE, OWNER AND**
17 **PRESIDENT**
18 **15644 Pomerado Rd., Ste. 303**
19 **Poway, CA 92064**

FIRST AMENDED ACCUSATION

20 **Pharmacy Permit No. PHY 54618,**

21 **BRETT ROBERSON**
22 **711 E. Coronado Rd.**
23 **Phoenix, AZ 85006**

24 **Registered Pharmacist License No. RPH**
25 **54390, and**

26 **ASHOK POPAT**
27 **630 Crestview Dr.**
28 **Diamond Bar, CA 91765**

Registered Pharmacist License No. RPH
39954

Respondents.

1 **PARTIES**

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

5 2. On or about October 20, 2016, the Board issued Pharmacy License Number PHY
6 54618 to Pacifico West Rx Inc., dba PureScience Rx. Cindy Justice is the owner and president of
7 Pacifico West Rx Inc., dba PureScience Rx. The Pharmacy Permit was in full force and effect at
8 all times relevant to the charges brought herein, and will expire on October 1, 2022, unless
9 renewed.

10 3. On or about March 25, 2003, the Board issued Registered Pharmacist License
11 Number RPH 54390 to Brett Roberson. Brett Roberson was the Pharmacist-in-Charge (PIC) at
12 PureScience Rx between February 21, 2017 and June 15, 2020. The Registered Pharmacist
13 License was in full force and effect at all times relevant to the charges brought herein, and will
14 expire on April 30, 2023, unless renewed.

15 4. On or about March 18, 1986, the Board issued Registered Pharmacist License
16 Number RPH 39954 to Ashok Popat. Ashok Popat was the Pharmacist-in-Charge (PIC) at
17 PureScience Rx between June 16, 2020 and April 9, 2021. The Registered Pharmacist License
18 was in full force and effect at all times relevant to the charges brought herein, and will expire on
19 April 30, 2023, unless renewed.

20 **JURISDICTION**

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

24 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
25 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
26 disciplinary action during the period within which the license may be renewed, restored, reissued
27 or reinstated.

28 ///

7. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

8. Section 4300 of the Code states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

• • •

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

• • •

9. 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.

STATUTORY PROVISIONS

10. Section 4023.5 of the Code states, in pertinent part, that “direct supervision and control” means that a pharmacist is on the premises at all times and is fully aware of all activities performed by either a pharmacy technician or intern pharmacist.

///

1 11. Section 4076 of the Code states, in pertinent part:

2 (a) A pharmacist shall not dispense any prescription except in a container that
3 meets the requirements of state and federal law and is correctly labeled with all of the
4 following:

5 ...

6 (11) (A) Commencing January 1, 2006, the physical description of the
7 dispensed medication, including its color, shape, and any identification code that
8 appears on the tablets or capsules . . .

9 12. Section 4081 of the Code states, in pertinent part:

10 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
11 disposition of dangerous drugs or dangerous devices shall be at all times during
12 business hours open to inspection by authorized officers of the law, and shall be
13 preserved for at least three years from the date of making.

14 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
15 food animal drug retailer shall be jointly responsible, with the pharmacist in charge or
16 representative-in-charge, for maintaining the records and inventory described in this
17 section.

18 ...

19 13. Section 4105, subdivisions (a) and (c) of the Code state:

20 (a) All records or other documentation of the acquisition and disposition of
21 dangerous drugs and devices by any entity licensed by the board shall be retained on
22 the licensed premises in a readily retrievable form.

23 ...

24 (c) The records required by this section shall be retained on the licensed premises
25 for a period of three years from the date of making.

26 14. Section 4112, subdivision (b) of the Code states, in pertinent part, that a person may
27 not act as a nonresident pharmacy unless he or she has obtained a license from the board.

28 15. Code section 4113, subdivision (c) states:

 The pharmacist-in-charge shall be responsible for a pharmacy's compliance
with all state and federal laws and regulations pertaining to the practice of pharmacy.

 16. Code section 4301 states in pertinent part:

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

 ...

1 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
2 deceit, or corruption, whether the act is committed in the course of relations as a
3 licensee or otherwise, and whether the act is a felony or misdemeanor.

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

6 ...

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

9 ...

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

15 17. Section 4307, subdivision (a) of the Code states:

16 Any person who has been denied a license or whose license has been revoked
17 or is under suspension, or who has failed to renew his or her license while it was
18 under suspension, or who has been a manager, administrator, owner member, officer,
19 director, associate, or partner of any partnership, corporation, firm, or association
20 whose application for a license has been denied or revoked, is under suspension or
21 has been placed on probation, and while acting as the manger, administrator, owner,
22 member, officer, director, associate, or partner had knowledge or knowingly
23 participated in any conduct for which the license was denied, revoked, suspended, or
24 placed on probation, shall be prohibited from serving as a manger, administrator,
25 owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

18. Health and Safety Code section 11165, subdivision (d) states:¹

For each prescription for a Schedule II, Schedule III, Schedule IV, or
Schedule V controlled substance, as defined in the controlled substances schedules in
federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and
1308.15, respectively of Title 21 of the Code of Federal Regulations, the dispensing
pharmacy, clinic, or other dispenser shall report the following information to the
department or contracted prescription data processing vendor as soon as reasonably
possible, but not more than one working day after the date a controlled substance is
released to the patient or patient's representative, in a format specified by the
department:

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

¹ This version of the statute became operative on January 1, 2021.

1 birth of the ultimate user;

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

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

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

8 (5) Quantity of the controlled substance dispensed.

9 (6) The International Statistical Classification of Diseases (ICD) Code
10 contained in the most current ICD revision, or any revision deemed sufficient by the
11 State Board of Pharmacy, if available.

12 (7) Number of refills ordered.

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

15 (9) Prescribing date of the prescription.

16 (10) Date of dispensing of the prescription.

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

18 **REGULATORY PROVISIONS**

19 19. California Code of Regulations, title 16, section 1714, subdivision (b) states:

20 Each pharmacy licensed by the board shall maintain its facilities, space,
21 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
22 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
23 area to accommodate the safe practice of pharmacy.

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

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

28 The controlled substances inventories required by Title 21, CFR, Section 1304
shall be available for inspection upon request for at least three years.

21. California Code of Regulations, title 16, section 1735.2, subdivision (i)(1)(A) states:

(i) Every compounded drug preparation shall be given a beyond use date
representing the date or date and time beyond which the compounded drug
preparation shall not be used, stored, transported or administered, and determined
based on the professional judgment of the pharmacist performing or supervising the
compounding.

(1) For non-sterile compounded drug preparation(s), the beyond use date shall not exceed any of the following:

(A) The shortest expiration date or beyond use date of any ingredient in the compounded drug preparation.

22. California Code of Regulations, title 16, section 1735.2, subdivision (k), states in pertinent part that prior to allowing any drug product preparation to be compounded in a pharmacy, the Pharmacist-in-Charge shall complete a self-assessment for compounding pharmacies developed by the board.

23. California Code of Regulations, title 16, section 1735.3, subdivision (a)(2)(D) states:

(a) For each compounded drug preparation, pharmacy records shall include:

(2) A compounding log consisting of a single document containing all of the following:

(D) The identity of the pharmacist reviewing the final drug preparation.

24. California Code of Regulations, title 16, section 1761 states, in pertinent part:

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

...

25. California Code of Regulations, title 16, section 1793.7 states, in pertinent part:

...

(b) Pharmacy technicians must work under the direct supervision of a pharmacist and in such a relationship that the supervising pharmacist is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

...

COST RECOVERY

26. 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.

///

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DEFINITIONS

27. **Diclofenac** is a dangerous drug per Business and Professions Code Section 4022. Diclofenac is used to treat Rheumatoid Arthritis and Osteoarthritis.

28. **Diflorasone** is a dangerous drug per Business and Professions Code Section 4022. Diflorasone is used to treat Psoriasis and Eczema.

29. **Calcipotriene** is a dangerous drug per Business and Professions Code Section 4022. Dovonex cream is a brand name for the generic drug Calcipotriene and is used to treat Psoriasis.

30. **Fluocinonide** cream is a dangerous drug per Business and Professions Code Section 4022. Lidex cream is a brand name for the generic drug Fluocinonide, and it is a topical steroid used to treat skin irritation, psoriasis, and skin rashes.

31. **Gentamicin** is a dangerous drug per Business and Professions Code Section 4022. Gentamicin is used to treat skin infections such as Impetigo and Folliculitis.

32. **Naproxen** sodium controlled-release tablets are a dangerous drug per Business and Professions Code Section 4022. They are used to treat pain and inflammation.

ALLEGATIONS

33. Pacifico West Rx Inc., dba PureScience Rx is a pharmacy in Poway, CA. Brett Roberson was the Pharmacist-in-Charge (PIC) at PureScience Rx between February 21, 2017 and June 15, 2020. Ashok Popat was the PIC at PureScience Rx between June 16, 2020 and April 9, 2021.

34. During the relevant time, PureScience Rx conducted much of its business via telemedicine through its "Skin Medicinals" web portal. On this portal, physicians electronically prescribe dermatological components for their patients, then patients have the option to accept or reject the prescription. Once accepted, the prescription is sent either to PureScience Rx in Poway, California, or to their affiliated pharmacy, PureScience Rx in Melbourne, Florida, depending on the location of the patient.

35. PureScience Rx's Prescription Intake Process policy (the "policy") states, in pertinent part: "Pure Science Rx does not dispense medications without receiving a valid prescription from a prescriber,"; "Upon receipt of a prescription the pharmacist will review all medication orders

1 for appropriateness, clarity, and accuracy. Pharmacist will also verify the prescriber, patient
2 and/or caregiver, if necessary in accordance with state laws.”; and “When a prescription appears
3 to be fraudulent the PIC will be notified and will conduct an investigation which includes
4 reviewing the prescription, patient profile and contacting the prescriber’s office to verify the
5 authenticity of the prescription.”

6 36. A Board inspector conducted an inspection of PureScience Rx in Poway, California,
7 on April 2, 2018. That day, the Board inspector requested that PureScience Rx produce the
8 original hard copy for prescription Rx #100307 for Fluocinonide 0.1% cream for patient JS
9 prescribed by Dr. JD on December 30, 2016. On April 19, 2018, PIC Roberson notified the
10 Board inspector that the document was missing and could not be produced.

11 37. The Board inspector found that between February 2017 and October 2017,
12 PureScience Rx and PIC Roberson issued numerous erroneous or uncertain prescriptions. For
13 example, on February 6, 2017, they filled and dispensed prescription Rx #100307 for
14 Fluocinonide 0.1% cream for Patient JS and listed Dr. JD as the prescriber. On September 19,
15 2017, they filled and dispensed prescription Rx #103003 for Calcipotriene 0.005% cream for
16 Patient AN and listed Dr. MP as the prescriber. On October 12, 2017, they filled and dispensed
17 prescription Rx #103428 for Calcipotriene 0.005% cream for Patient RP and listed Dr. BB as the
18 prescriber. On October 18, 2017, they filled and dispensed prescription Rx #103616 for
19 Calcipotriene 0.005% cream for Patient LV and listed Dr. SR as the prescriber. In subsequent
20 interviews with the Board investigator, all four of these doctors stated they did not prescribe the
21 drugs for the respective patients.

22 38. On November 22, 2017, PureScience Rx and PIC Roberson filled prescription Rx
23 #105133 for Patient RS for Naproxen sodium controlled-release 375 mg tablets but did not list the
24 physical description on the prescription label/bottle.

25 39. On May 29, 2020, PIC Roberson, on behalf of PureScience Rx, said in a statement
26 signed under penalty of perjury that between January 19, 2020 and May 20, 2020, pharmacy
27 employees in the affiliated PureScience Rx in Melbourne, Florida, accessed and shared the server
28 located at the PureScience Rx in Poway, California, and the pharmacy and patient records

1 contained in it; and typed prescriptions which were then dispensed from PureScience Rx in
2 Poway, California. PIC Roberson, on behalf of PureScience Rx, further stated that these hourly
3 employees worked a total of approximately of 1,013 hours and did not obtain nonresident
4 pharmacy licenses. PureScience Rx in Melbourne, Florida, is not licensed or registered in
5 California as a nonresident pharmacy.

6 40. Also on May 29, 2020, PIC Roberson, on behalf of PureScience Rx, said in a
7 statement signed under penalty of perjury that Technician AD, licensed in California, performed
8 duties for the PureScience Rx in Poway, California, at the affiliated PureScience Rx in
9 Melbourne, Florida—including taking patient calls, typing prescription labels, and entering
10 prescription information into their computer system—but was not under the direct supervision
11 and control of a pharmacist in California.

12 41. On November 24, 2020, the Board received a complaint from an insurance company
13 fraud investigator alleging that PureScience Rx was engaging in insurance fraud. The Board
14 investigated that complaint.

15 42. As part of that investigation, the Board inspector conducted an audit of certain topical
16 drugs identified in the insurance company complaint. The inspector audited the records for
17 gentamicin 1% cream, diclofenac 3% gel, diflorasone 0.05% ointment and calcipotriene 0.005%
18 cream. The Board inspector concluded that from March 30, 2018, to February 4, 2021,
19 PureScienceRx had overages (i.e., dispensed more of these topical drugs than purchased) of
20 34,080 grams of gentamicin 1% cream, and 14,200 grams of diclofenac 3% gel, and shortages
21 (i.e., purchased more of these topical drugs than dispensed) of 960 grams of diflorasone 0.05%
22 ointment, and 1,230 grams of calcipotriene 0.005% cream.

23 43. From January 16, 2019 to May 26, 2020, PureScienceRx falsely billed forty-nine
24 prescriptions, totaling \$76,546.28 (and in some instances, rebilled them) to an insurance company
25 which were not written or otherwise authorized by prescribers. The insurance company paid
26 \$74,240.22 to PureScienceRx for these prescriptions.

27 44. From June 9, 2020 through May 28, 2021, PureScienceRx dispensed 102
28 prescriptions for controlled substances (95 of them while Ashok Popat was the Pharmacist-in-

Charge) but failed to report them to the California Department of Justice or the contracted prescription data processing vendor within one business day or seven days after the date the controlled substance was released to the patient or the patient's representative.

45. On April 9, 2021, PureScienceRx did not list the identity of the pharmacist reviewing the final six drug preparations from lot number 04092021 in the compounding log.

46. On April 9, 2021, PureScienceRx compounded a non-sterile drug preparation, lot number 04092021@9 of lidocaine/cyclobenzaprine suppository 50mg/5mg with an ingredient, silica gel micronized NF power that had an expiration date of June 19, 2021. Nonetheless, PureScienceRx assigned a beyond use date of October 6, 2021 to that drug preparation.

FIRST CAUSE FOR DISCIPLINE

(Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records; Current Inventory—All Respondents)

47. Respondents are subject to disciplinary action under Code section 4301 subdivision (o), and 4081 subdivision (b), for violating Code sections 4081 subdivision (a) and 4105 subdivisions (a) and (c), in that they failed to maintain all records of acquisition and disposition for at least three years and maintain a current inventory of dangerous drugs as defined by title 16, California Code of Regulations, section 1718, as alleged in paragraphs 36 and 42, above.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Security of Drug—All Respondents)

48. Respondents are subject to disciplinary action under Code section 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section 1714, subdivision (b), in that, from March 30, 2018 to February 4, 2021, PureScienceRx had overages of 34,080 grams of gentamicin 1% cream and 14,200 grams of diclofenac 3% gel, and shortages of 960 grams of diflorasone 0.05% ointment and 1,230 grams of calcipotriene 0.005% cream, as set forth in paragraph 42, above.

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THIRD CAUSE FOR DISCIPLINE

(Erroneous or Uncertain Prescriptions—Respondents PureScience Rx and Roberson)

49. Respondents are subject to disciplinary action under Code section 4301, subdivision (o) for violating California Code of Regulations, title 16, section 1761, subdivision (a), in that they filed and dispensed prescriptions without the correct prescriber information required to validate the prescriptions, as alleged in paragraph 37, above.

FOURTH CAUSE FOR DISCIPLINE

(Improper Container and Label—Respondents PureScience Rx and Roberson)

50. Respondents are subject to disciplinary action under Code section 4301, subdivision (o) for violating Code section 4076, subdivision (a)(11)(A), in that they failed to provide a physical description of the tablets on the prescription label/bottle, as alleged in paragraph 38, above.

FIFTH CAUSE FOR DISCIPLINE

(Sharing Common Files with Unlicensed Entity —Respondents PureScience Rx and Roberson)

51. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1717.1, in that Respondents allowed employees at an unlicensed pharmacy (PureScience Rx. in Melbourne, Florida) to access the server and patient information located at PureScience Rx in Poway, California, and to process prescriptions that were filled by PureScience Rx in Poway California, as alleged in paragraph 39, above.

SIXTH CAUSE FOR DISCIPLINE

(Unsupervised Pharmacy Technician—Respondents PureScience Rx and Roberson)

52. Respondents are subject to disciplinary action under Code section 4301, subdivision (o) for violating Code section 4023.5, as defined by the California Code of Regulations, title 16, section 1793.7, subdivision (b), in that they allowed a pharmacy technician to work in Florida on their California prescription and dispensing activities, without the direct supervision of a pharmacist, as alleged in paragraph 40, above.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonest, Fraudulent, Deceitful and Corrupt Acts—Respondents PureScience Rx and Roberson)

53. Respondents are subject to disciplinary action under Code section 4301, subdivision (f), for their dishonest, fraudulent, deceitful and corrupt acts, as set forth above in paragraphs 41 through 43, above.

EIGHTH CAUSE FOR DISCIPLINE

(Knowingly Making or Signing False Documents—Respondents PureScience Rx and Roberson)

54. Respondents are subject to disciplinary action under Code section 4301, subdivision (g), for knowingly making or signing certificates or documents that falsely represent the existence or nonexistence of a state of facts, as set forth above in paragraphs 41 through 43, above.

NINTH CAUSE FOR DISCIPLINE

(Failure to Report Dispensing of Controlled Substances—Respondents PureScience Rx and Popat)

55. Respondents are subject to disciplinary action under Code section 4301, subdivisions (j) and (o) for violating Health and Safety Code section 11165, subdivision (d), in that they failed to report the dispensing of controlled substance prescriptions to the California Department of Justice or the contracted prescription data processing vendor, as alleged in paragraph 44, above.

TENTH CAUSE FOR DISCIPLINE

(Incomplete Compounding Log—Respondents PureScience Rx and Popat)

56. Respondents are subject to disciplinary action under Code section 4301, subdivision (o) for violating California Code of Regulations, title 16, section 1735.3, subdivision (a)(2)(D), in that they failed to identify the pharmacist reviewing final drug preparations, as alleged in paragraph 45, above.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Assigning Improper Beyond Use Date—Respondents PureScience Rx and Popat)**

3 57. Respondents are subject to disciplinary action under Code section 4301, subdivision
4 (o) for violating California Code of Regulations, title 16, section 1735.2, subdivision (i)(1)(A), in
5 that they assigned a beyond use date to a non-sterile drug preparation which was later than the
6 shortest expiration date of an ingredient in that compounded drug preparation, as alleged in
7 paragraph 46, above.

8 **TWELFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct—All Respondents)**

10 58. Respondents are subject to disciplinary action under Code section 4301 for
11 unprofessional conduct because they engaged in the activities described above in paragraphs 33
12 through 46.

13 **DISCIPLINARY CONSIDERATIONS**

14 59. On September 15, 2017, the Board issued a citation against PureScience Rx for a
15 violation of the California Code of Regulations, title 16, section 1735.2, subdivision (k). The
16 circumstances leading to this citation were that on February 7, 2017, an inspection of PureScience
17 Rx revealed that the pharmacy started compounding and dispensing compounded drug products
18 in November 2016, averaging one to two prescriptions per day. However, former PIC KL did not
19 complete the Compounding self-assessment that was required to be completed by the PIC before
20 allowing any drug product preparation to be compounded in the pharmacy. The Board issued a
21 fine of \$500.00.

22 **OTHER MATTERS**

23 60. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
24 54618 to Pacifico West Rx Inc., dba PureScience Rx, then it shall be prohibited from serving as a
25 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
26 five years if Pharmacy Permit Number PHY 54618 is placed on probation or until Pharmacy
27 Permit Number PHY 54618 is reinstated if it is revoked.

1 61. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
2 54618 to Pacifico West Rx Inc., dba PureScience Rx while Cindy Justice has been an owner or
3 manager and had knowledge of or knowingly participated in any conduct for which the licensee
4 was disciplined, then Cindy Justice shall be prohibited from serving as a manager, administrator,
5 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
6 Permit Number PHY 54618 is placed on probation or until Pharmacy Permit Number PHY 54618
7 is reinstated if it is revoked.

8 62. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
9 54618 to Pacifico West Rx Inc., dba PureScience Rx while Brett Roberson has been a manager
10 and had knowledge of or knowingly participated in any conduct for which the licensee was
11 disciplined, then Brett Roberson shall be prohibited from serving as a manager, administrator,
12 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
13 Permit Number PHY 54618 is placed on probation or until Pharmacy Permit Number PHY 54618
14 is reinstated if it is revoked.

15 63. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
16 RPH 54390 issued to Brett Roberson, then Brett Roberson shall be prohibited from serving as a
17 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
18 five years if Pharmacist License Number RPH 54390 is placed on probation or until Pharmacist
19 License Number RPH 54390 is reinstated if it is revoked.

20 64. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
21 54618 to Pacifico West Rx Inc., dba PureScience Rx while Ashok Popat has been a manager and
22 had knowledge of or knowingly participated in any conduct for which the licensee was
23 disciplined, then Ashok Popat shall be prohibited from serving as a manager, administrator,
24 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
25 Permit Number PHY 54618 is placed on probation or until Pharmacy Permit Number PHY 54618
26 is reinstated if it is revoked.

27 65. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
28 RPH 39954 issued to Ashok Popat, then Ashok Popat shall be prohibited from serving as a

1 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
2 five years if Pharmacist License Number RPH 39954 is placed on probation or until Pharmacist
3 License Number RPH 39954 is reinstated if it is revoked.

4 **PRAYER**

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

7 1. Revoking or suspending Pharmacy License Number PHY 54618, issued to Pacifico
8 West Rx Inc., dba PureScience Rx;

9 2. Revoking or suspending Registered Pharmacist License Number RPH 54390, issued
10 to Brett Roberson;

11 3. Revoking or suspending Registered Pharmacist License Number RPH 39954, issued
12 to Ashok Popat;

13 4. Prohibiting Pacifico West Rx Inc., dba PureScience Rx from serving as a manager,
14 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
15 Pharmacy Permit Number PHY 54618 is placed on probation or until Pharmacy Permit Number
16 PHY 54618 is reinstated if it is revoked;

17 5. Prohibiting Cindy Justice from serving as a manager, administrator, owner, member,
18 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
19 PHY 54618 is placed on probation or until Pharmacy Permit Number PHY 54618 is reinstated if
20 it is revoked;

21 6. Prohibiting Brett Roberson from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
23 Number RPH 54390 is placed on probation or until Pharmacist License Number RPH 54390 is
24 reinstated if it is revoked;

25 7. Prohibiting Ashok Popat from serving as a manager, administrator, owner, member,
26 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number
27 RPH 39954 is placed on probation or until Pharmacist License Number RPH 39954 is reinstated
28 if it is revoked;

1 8. Ordering Pacifico West Rx Inc., dba PureScience Rx, Brett Roberson and Ashok
2 Popat to pay the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3; and,

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

5
6 DATED: 4/12/2022

Signature on File

ANNE SODERGREN
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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