

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

**In the Matter of the Accusation Against:**

**CVS/CAREMARK PCS PENNSYLVANIA MAIL PHARMACY LLC; dba  
CVS CAREMARK OR INGENIORX HOME DELIVERY,  
THOMAS S. MOFFATT,  
VICE PRESIDENT & SECRETARY,  
JEFFREY E. CLARK,  
TREASURER/CHIEF FINANCIAL OFFICER,  
SHEELAGH M. BEAULIEU,  
TREASURER/CHIEF FINANCIAL OFFICER,  
KIMBERLY M. DESOUSA,  
SECRETARY**

**Nonresident Pharmacy Permit No. NRP 680**

**Respondent**

**Agency Case No. 7258**

**OAH No. 2022120362**

## DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 July 7, 2023.

It is so ORDERED on June 7, 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 KAREN R. DENVIR  
Supervising Deputy Attorney General  
3 KATELYN E. DOCHERTY  
Deputy Attorney General  
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7 *Attorneys for Complainant*

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

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13 In the Matter of the Accusation Against:

Case No. 7258

14 **CVS/CAREMARK PCS PENNSYLVANIA**  
**MAIL PHARMACY LLC; DBA CVS**  
15 **CAREMARK OR INGENIORX HOME**  
**DELIVERY**  
16 **THOMAS S. MOFFATT,**  
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18 **OFFICER**  
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19 **TREASURER/CHIEF FINANCIAL**  
**OFFICER**  
20 **KIMBERLY M. DESOUSA,**  
**SECRETARY**  
21 **One Great Valley Blvd.**  
**Wilkes-Barre, PA 18076**

OAH No. 2022120362

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

22 **Nonresident Pharmacy Permit No. NRP 680**

23 Respondents.  
24

25  
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 Katelyn E. Docherty, Deputy Attorney  
5 General.

6 2. Respondent Caremark-PCS Pennsylvania Mail Pharmacy LLC, doing business as  
7 (dba) CVS/Caremark or IngenioRx Home Delivery (Respondent), is represented in this  
8 proceeding by attorney Jeff J. Astarabadi, whose address is: 660 Newport Center Drive, Suite  
9 900, Newport Beach, CA 92660.

10 3. On or about July 20, 2005, the Board issued Nonresident Pharmacy Permit Number  
11 NRP 680 to Caremark-PCS Pennsylvania Mail Pharmacy LLC, doing business as (dba)  
12 CVS/Caremark or IngenioRx Home Delivery (Respondent), with Thomas S. Moffatt as Vice-  
13 President and Secretary, Jeffrey E. Clark, as Treasurer/Chief Financial Officer, Sheelagh M.  
14 Beaulieu, Treasurer/Chief Financial Officer, and Kimberley M. DeSousa, Secretary. The  
15 Nonresident Pharmacy Permit was in full force and effect at all times relevant to the charges  
16 brought herein, and will expire July 1, 2023, unless renewed.

17 **JURISDICTION**

18 4. Accusation No. 7258 was filed before the Board, and is currently pending against  
19 Respondent. The Accusation and all other statutorily required documents were properly served  
20 on Respondent on October 10, 2022. Respondent timely filed its Notice of Defense contesting  
21 the Accusation.

22 5. A copy of Accusation No. 7258 is attached as exhibit A and incorporated herein by  
23 reference.

24 **ADVISEMENT AND WAIVERS**

25 6. Respondent has carefully read, fully discussed with counsel, and understands the  
26 charges and allegations in Accusation No. 7258. Respondent has also carefully read, fully  
27 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
28 Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

**CULPABILITY**

9. Respondent agrees that the charges, if accepted, and allegations in Accusation No. 7258, if proven at hearing, constitutes cause for imposing discipline on its Nonresident Pharmacy Permit.

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

11. Respondent agrees that its Nonresident Pharmacy Permit is subject to discipline and it agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

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

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

14. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary 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.

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

## DISCIPLINARY ORDER

1. IT IS HEREBY ORDERED that Nonresident Pharmacy Permit No. NRP 680 issued to Respondent Caremark-PCS Pennsylvania Mail Pharmacy LLC doing business as (dba) CVS/Caremark or IngenioRx Home Delivery is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

## 2. Definition: Respondent

For the purposes of these terms and conditions, “respondent” shall refer to Respondent Caremark-PCS Pennsylvania Mail Pharmacy LLC, doing business as (dba) CVS/Caremark or IngenioRx Home Delivery All terms and conditions stated herein shall bind and be applicable to the licensed premises and, as applicable, to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by Respondent to or before the Board or its designee shall be made by an owner or officer of the corporation with authority to act on behalf of and legally bind the licensed entity.

### 3. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Nonresident Pharmacy permit or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

#### **4. Report to the Board**

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Any direction to report in-person may be satisfied via video conference with permission from Board or its designee. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

#### **5. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Any direction to report in-person may be satisfied via video conference with permission from the Board or its designee. Failure to appear for any scheduled interview without

1 prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews  
2 with the Board or its designee during the period of probation, shall be considered a violation of  
3 probation.

4 **6. Cooperate with Board Staff**

5 Respondent shall timely cooperate with the Board's inspection program and with the  
6 Board's monitoring and investigation of respondent's compliance with the terms and conditions of  
7 the probation, including but not limited to: timely responses to requests for information by Board  
8 staff; timely compliance with directives from Board staff regarding requirements of any term or  
9 condition of probation; and timely completion of documentation pertaining to a term or condition  
10 of probation. Failure to timely cooperate shall be considered a violation of probation.

11 **7. Reimbursement of Board Costs**

12 As a condition precedent to successful completion of probation, respondent shall pay to the  
13 Board its costs of investigation and prosecution in the amount of \$57,985.25. Respondent shall  
14 pay the Board costs within sixty (60) days after the effective date of this decision. There shall be  
15 no deviation from this schedule absent prior written approval by the Board or its designee. Failure  
16 to pay costs by the deadline(s) as directed shall be considered a violation of probation.

17 **8. Probation Monitoring Costs**

18 Respondent shall pay any costs associated with probation monitoring as determined by the  
19 Board and every year of probation. Probation monitoring costs include travel expenses for an  
20 inspector to inspect the facility on a schedule as determined by the Board. Such costs shall be  
21 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such  
22 costs by the deadline(s) as directed shall be considered a violation of probation.

23 **9. Status of License**

24 Respondent shall, at all times while on probation, maintain a current and active Nonresident  
25 Pharmacy Permit with the Board. Failure to maintain current licensure shall be considered a  
26 violation of probation.

27 If respondent's license expires or is cancelled by operation of law or otherwise at any time  
28 during the period of probation, including any extensions thereof or otherwise, upon renewal or



1 reapplication respondent's license shall be subject to all terms and conditions of this probation not  
2 previously satisfied.

3 **10. License Surrender While on Probation/Suspension**

4 Following the effective date of this decision, should respondent wish to discontinue  
5 business, respondent may tender its premises license to the Board for surrender. The Board or its  
6 designee shall have the discretion whether to grant the request for surrender or take any other  
7 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
8 license, respondent will no longer be subject to the terms and conditions of probation.

9 Respondent may not apply for any new license from the Board for three (3) years from the  
10 effective date of the surrender. Respondent shall meet all requirements applicable to the license  
11 sought as of the date the application for that license is submitted to the Board. All of the causes  
12 for discipline set forth in the accusation will be deemed to be true and correct and admitted by  
13 respondent for purposes of applying for or being granted any new licensure by the Board.

14 Respondent further stipulates that it shall reimburse the Board for its costs of investigation  
15 and prosecution prior to the acceptance of the surrender.

16 Upon acceptance of the surrender, respondent shall relinquish its premises wall and renewal  
17 license to the Board within ten (10) days of notification by the Board that the surrender is  
18 accepted. Respondent shall further submit a completed Discontinuance of Business form  
19 according to Board guidelines and shall notify the Board of the records inventory transfer within  
20 five (5) days. Respondent shall further arrange for the transfer of all records of acquisition and  
21 disposition of dangerous drugs and/or devices to premises licensed and approved by the Board.

22 Respondent shall also, by the effective date of this decision, arrange for the continuation of  
23 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing  
24 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more  
25 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary  
26 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to  
27 the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the  
28 Board. For the purposes of this provision, "ongoing patients" means those patients for whom the

1 pharmacy has on file a prescription with one or more refills outstanding, or for whom the  
2 pharmacy has filled a prescription within the preceding sixty (60) days.

3 Respondent further stipulates that it shall reimburse the Board for its costs of investigation  
4 and prosecution prior to the acceptance of the surrender.

5 **11. Sale or Discontinuance of Business**

6 During the period of probation, should respondent sell, trade or transfer all or part of the  
7 ownership of the licensed entity, discontinue doing business under the license issued to  
8 respondent, or should practice at that location be assumed by another full or partial owner,  
9 person, firm, business, or entity, under the same or a different premises license number, the Board  
10 or its designee shall have the sole discretion to determine whether to exercise continuing  
11 jurisdiction over the licensed location, under the current or new premises license number, and/or  
12 carry the remaining period of probation forward to be applicable to the current or new premises  
13 license number of the new owner.

14 **12. Notice to Employees**

15 Respondent shall, upon or before the effective date of this decision, ensure that all  
16 employees involved in permit operations are made aware of all the terms and conditions of  
17 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
18 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
19 remain posted throughout the probation period. Respondent shall ensure that any employees hired  
20 or used after the effective date of this decision are made aware of the terms and conditions of  
21 probation by posting a notice, circulating a notice, or both. Additionally, respondent shall submit  
22 written notification to the Board, within fifteen (15) days of the effective date of this decision,  
23 that this term has been satisfied. Failure to timely provide such notification to employees, or to  
24 timely submit such notification to the Board shall be considered a violation of probation.

25 "Employees" as used in this provision includes all full-time, part-time, volunteer,  
26 temporary, and relief employees and independent contractors employed or hired at any time  
27 during probation.

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1           **13. Owners and Officers: Knowledge of the Law**

2           Respondent shall provide, within thirty (30) days after the effective date of this decision,  
3 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
4 or more of the interest in respondent or respondent's stock, and all of its officers involved in  
5 pharmacy permit operations, stating under penalty of perjury that said individuals have read and  
6 are familiar with state and federal laws and regulations governing the practice of pharmacy. The  
7 failure to timely provide said statements under penalty of perjury shall be considered a violation  
8 of probation. The Board will also accept compliance with this condition by showing meeting  
9 minutes or documents, or dissemination and acknowledgement to officers showing understanding  
10 of state and federal laws and regulations governing the practice of pharmacy and having an  
11 officer on record sign under penalty of perjury that all officers involved in pharmacy permit  
12 operations are present.

13           **14. Premises Open for Business**

14           Respondent shall remain open and engaged in its ordinary business as a Nonresident  
15 Pharmacy in California for a minimum of one hundred (100) hours per calendar month. Any  
16 month during which this minimum is not met shall toll the period of probation, i.e., the period of  
17 probation shall be extended by one month for each month during with this minimum is not met.  
18 During any such period of tolling of probation, respondent must nonetheless comply with all  
19 terms and conditions of probation, unless respondent is informed otherwise in writing by the  
20 Board or its designee. If respondent is not open and engaged in its ordinary business as a  
21 Nonresident Pharmacy for a minimum of one hundred (100) hours in any calendar month, for any  
22 reason (including vacation), respondent shall notify the Board in writing within ten (10) days of  
23 the conclusion of that calendar month. This notification shall include at minimum all of the  
24 following: the date(s) and hours respondent was open; the reason(s) for the interruption or why  
25 business was not conducted; and the anticipated date(s) on which respondent will resume business  
26 as required. Respondent shall further notify the Board in writing with ten (10) days following the  
27 next calendar month during which respondent is open and engaged in its ordinary business as a  
28 nonresident pharmacy in California for a minimum of one hundred (100) hours. Any failure to

1 timely provide such notification(s) shall be considered a violation of probation.

2 **15. Posted Notice of Probation**

3 Respondent shall prominently post a probation notice on its website. Posting on the website  
4 shall be on Respondent's homepage may be through the use of a banner with a link labeled  
5 "Notice to California Patients," which shall be in a font size of at least 12 point and takes you to  
6 the Board's probation notice. The probation notice shall be provided by the Board or its designee  
7 and must be posted on Respondent's website's homepage within forty-five (45) days after receipt.  
8 Respondent will exercise its best efforts to post this notice with thirty (30) days. Failure to timely  
9 post such notice, or to maintain the posting during the entire period of probation, shall be  
10 considered a violation of probation.

11 Respondent shall not, directly or indirectly, engage in any conduct or make any statement  
12 which is intended to mislead or is likely to have the effect of misleading any patient, customer,  
13 member of the public, or other person(s) as to the nature of and reason for the probation of the  
14 licensed entity.

15 **16. Violation of Probation**

16 If a respondent has not complied with any term or condition of probation, the Board shall  
17 have continuing jurisdiction over respondent, and probation shall be automatically extended, until  
18 all terms and conditions have been satisfied or the Board has taken other action as deemed  
19 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
20 to impose the penalty that was stayed.

21 If respondent violates probation in any respect, the Board, after giving respondent notice  
22 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
23 was stayed, during such a proceeding all of the causes for discipline set forth in the accusation  
24 shall be deemed true and correct and admitted by respondent. If a petition to revoke probation or  
25 an accusation is filed against respondent during probation, the Board shall have continuing  
26 jurisdiction and the period of probation shall be automatically extended until the petition to  
27 revoke probation or accusation is heard and decided.

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1 I have read and fully discussed the terms and conditions and other matters contained in the  
2 above Stipulated Settlement and Disciplinary Order with Jeff Sinko, who is Assistant  
3 General Counsel for CVS Pharmacy, Inc., acting on behalf of Respondent Caremark-PCS  
4 Pennsylvania Mail Pharmacy LLC, doing business as (dba) CVS/Caremark or IngenioRx  
5 Home Delivery. I approve its form and content.

6 DATED: \_\_\_\_\_

7 JEFF J. ASTARABADI  
8 *Attorney for Respondent*

9  
10 **ENDORSEMENT**

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
12 submitted for consideration by the Board of Pharmacy.  
13

14 DATED: \_\_\_\_\_

Respectfully submitted,

15 ROB BONTA  
16 Attorney General of California  
17 KAREN R. DENVIR  
Supervising Deputy Attorney General

18  
19 KATELYN E. DOCHERTY  
20 Deputy Attorney General  
21 *Attorneys for Complainant*  
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5 Home Delivery. I approve its form and content.

6 DATED: 5.15.23 \_\_\_\_\_

  
7 JEFF J. ASTARABADI  
8 *Attorney for Respondent*

9  
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Respectfully submitted,

15 ROB BONTA  
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Supervising Deputy Attorney General

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19 KATELYN E. DOCHERTY  
20 Deputy Attorney General  
21 *Attorneys for Complainant*  
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7 JEFF J. ASTARABADI  
8 *Attorney for Respondent*

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10 **ENDORSEMENT**

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14 DATED: 5/15/2023

Respectfully submitted,

15 ROB BONTA  
16 Attorney General of California  
17 KAREN R. DENVIR  
18 Supervising Deputy Attorney General



19 KATELYN E. DOCHERTY  
20 Deputy Attorney General  
21 *Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 7258**

1 ROB BONTA  
Attorney General of California  
2 KAREN R. DENVIR  
Supervising Deputy Attorney General  
3 KATELYN E. DOCHERTY  
Deputy Attorney General  
4 State Bar No. 322028  
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5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-6277  
Facsimile: (916) 327-8643  
7 E-mail: Katelyn.Docherty@doj.ca.gov  
*Attorneys for Complainant*

9 **BEFORE THE**  
10 **BOARD OF PHARMACY**  
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12 **STATE OF CALIFORNIA**

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24 **TREASURER/CHIEF FINANCIAL**  
25 **OFFICER**  
26 **KIMBERLY M. DESOUSA,**  
27 **SECRETARY**  
28 **One Great Valley Blvd.**  
**Wilkes-Barre, PA 18076**

**ACCUSATION**

**Nonresident Pharmacy Permit No. NRP 680**

Respondent.

**PARTIES**

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

2. On or about July 20, 2005, the Board of Pharmacy (Board) issued Nonresident Pharmacy Permit Number NRP 680 to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as (dba) CVS Caremark or IngenioRx Home Delivery (Respondent), with Thomas S. Moffatt as Vice-President and Secretary, Jeffrey E. Clark, as Treasurer/ Chief Financial Officer, Sheelagh M. Beaulieu, Treasurer/Chief Financial Officer, and Kimberley M. DeSousa, Secretary. The Non-Resident Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein, and will expire July 1, 2023, unless renewed.

### **JURISDICTION**

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

4. Section 4300 of the Code states, 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.

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///



## **STATUTORY AND REGULATORY PROVISIONS**

7. Section 4112 of the Code states, in pertinent part:

...

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

...

8. Section 4126.5 of the Code states, in pertinent part:

(a) A pharmacy may furnish dangerous drugs only to the following:

...

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

...

(c) Notwithstanding any other law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

9. Section 4156 of the Code states:

A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the act would constitute unprofessional conduct under any statute or 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.

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

...

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of

subdivision (a) of Section 11153 of the Health and Safety Code.

...

(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.

...

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

...

11. Section 4306.5 of the Code provides that “unprofessional conduct” for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

12. Section 4059, subdivision (a), of the Code states:

A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

### **Health and Safety Code**

13. Health and Safety Code section 11152, states:

No person shall write, issue, fill, compound, or dispense a prescription that

does not conform to this division.

14. Health and Safety Code section 11153, subdivision (a), provides that:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

#### **California Code of Regulations**

15. California Code of Regulations (CCR), title 16, section 1716, states:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code. Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

16. CCR, title 16, section 1761, provides that:

(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.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

#### **Federal Code of Regulations**

17. Federal Code of Regulations (CFR), title 21, section 1306.04, provides, in pertinent part, that:

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

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**Pennsylvania Code**

18. Pennsylvania Code of Regulations, title 49, section 25.52, provides, in pertinent part, that:

(a) A prescription for a controlled substance must be issued for a legitimate medical purpose by a licensed practitioner in the usual course of professional practice. The responsibility for proper prescribing of controlled substances is upon the practitioner but a corresponding responsibility rests with the pharmacist who dispenses the medication and interprets the directions of the prescriber to the patient.

...

19. Pennsylvania Code of Regulations, title 49, section 27.18, provides, in pertinent part, that:

...

(t) A pharmacist may only refill a prescription at a reasonable time prior to the time when the contents of the prescription shall be consumed according to prescriber's directions.

...

**DRUG DESCRIPTIONS**

20. Xanax is the brand name of the generic drug Alprazolam and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d). Xanax is indicated for use for the treatment of anxiety.

21. Adderall is the brand name for Amphetamine and Dextroamphetamine salts and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Adderall is indicated for use for the treatment of Attention-Deficit/Hyperactivity Disorder (ADHD).

22. Klonopin is the brand name for Clonazepam and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(7). Klonopin is indicated for use for the treatment of anxiety.

23. Norco is the brand name for Hydrocodone/Acetaminophen (APAP) and is a dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and

1 Safety Code section 11055, subdivision (b)(1)(I)(ii) Norco is indicated for use for the treatment  
2 of pain.

3 24. Dilaudid and Exalgo are the brand names for Hydromorphone and is a dangerous  
4 drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety  
5 Code section 11055, subdivision (b)(1)(J). Dilaudid and Exalgo are indicated for use for the  
6 treatment of pain.

7 25. Vyvanse is the brand name for Lisdexamfetamine and is a dangerous drug pursuant to  
8 Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055,  
9 subdivision (d)(1). Vyvanse is indicated for use for the treatment of ADHD.

10 26. Ritalin is the brand name for Methylphenidate and is a dangerous drug pursuant to  
11 Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055,  
12 subdivision (d)(6). Ritalin is indicated for use for the treatment of ADHD.

13 27. MS Contin and Avinza are the brand names for Morphine Sulfate and is a dangerous  
14 drug pursuant to Code section 4022 and a controlled substance pursuant to Health and Safety  
15 Code section 11055, subdivision (b)(1)(L). MS Contin and Avinza are indicated for use for the  
16 treatment of pain.

17 28. Roxicodone is the brand name for Oxycodone and is a dangerous drug pursuant to  
18 Code section 4022 and a controlled substance pursuant to Health and Safety Code section 11055,  
19 subdivision (b)(1)(M). Roxicodone is indicated for use for the treatment of pain.

20 29. Percocet is the brand name for Oxycodone/Acetaminophen (APAP) and is a  
21 dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and  
22 Safety Code section 11055, subdivision (b)(1)(M). Percocet is indicated for use for the treatment  
23 of pain.

24 30. Ambien is the brand name for Zolpidem and is a dangerous drug pursuant to Code  
25 section 4022 and a controlled substance pursuant to Health and Safety Code section 11057,  
26 subdivision (d)(32). Ambien is indicated for use for the treatment of insomnia.

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## **FACTUAL ALLEGATIONS**

31. At all times mentioned herein, Respondent Pharmacy was licensed as nonresident pharmacy and located in Wilkes-Barre, Pennsylvania.

32. The Controlled Substance Utilization Review and Evaluation System (CURES) is California's prescription drug monitoring program. Pharmacies licensed in California are required to report all prescriptions for Schedule II, III, and IV controlled substances to the database every week. On January 1, 2021, this reporting requirement was changed to require Schedules II-V controlled substance prescriptions to be reported not more than one working day after the date a controlled substance is released to a patient. The data can be used by licensed prescribers and pharmacists to evaluate and determine whether their patients are utilizing controlled substances correctly and whether a patient has used multiple prescribers or multiple pharmacies to fill controlled substance prescriptions. Additionally, law enforcement and regulatory agencies, such as the Board, have access to the CURES database for official oversight and investigatory purposes.

33. In July 2021, the Board began an investigation into Respondent. The Board Inspector reviewed the CURES dispensing data reported by Respondent and determined a need to further evaluate the pharmacy's practices relating to the dispensing of controlled substances.

34. The Board Inspector received Respondent's dispensing records from July 6, 2018 through July 6, 2021; the available original prescription documents from that time period; CVS Caremark policies; and prescription notes regarding the requested prescriptions.

35. The Board's inspection of these records identified the following dispensing trends and multiple objective factors of irregularity—or red flags<sup>1</sup>—that should have given Respondent reason to know or suspect that numerous controlled substance prescriptions from July of 2018 through July 2021 were not issued for a legitimate medical purpose.

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<sup>1</sup> Red flags are indicators Pharmacist are responsible for identifying to ensure they only fill prescriptions issued for a legitimate medical purpose. See *In the Matter of California Board of Pharmacy vs. Pacifica Pharmacy and Thang Tran Case No. 2013-01.*)

**a. Excessive furnishing/early dispensing of prescriptions**

36. Early dispensing of controlled substances occurs when a prescription for a controlled substance is filled before the previously dispensed supplies are exhausted. Early dispensing is a known red flag of abuse of controlled substances.

37. It is most common practice in retail pharmacies to only fill controlled substance prescriptions only when all but a few days of previously dispensed supplies have been exhausted. In order to confirm this practice the Board Investigator surveyed 11 CVS pharmacies located in some of the most common cities to which controlled substances were shipped by Respondent. Three of the 11 pharmacies surveyed stated they do not dispense controlled substances before the date they are due, while eight of the 11 follow the common two day rule.

38. On and between July 6, 2018 through July 6, 2021, Respondent filled/dispensed over 2,100 prescriptions (over 69,000 dosage units) more than seven days early to 549 California patients.

39. The Board Inspector reviewed shipping times for over 20,000 controlled substances in which the delivery date was documented in Respondent's records and found the average shipping time was less than six days. To give Respondent a buffer the Board Inspector allowed Respondent to have seven days total for shipping when reviewing whether a prescription was filled/dispensed early.

40. From review of records provided by Respondent, below is a list of the total extra controlled substances by drug category dispensed early to patients in California:

Drug	Total extra quantity supplied (Tablets or other dosage units)
AMPHETAMINE/DEXTROAMPHETA 20MG	7,302
HYDROCODONE/ACETAMINOPHEN 10-325MG	3,875
AMPHETAMINE/DEXTROAMPHETA 20MG ER	2,962
AMPHETAMINE/DEXTROAMPHETA 10MG	2,769
AMPHETAMINE/DEXTROAMPHETA 30MG ER	2,499
METHYLPHENIDATE HYDROCHLO 36MG ER	2,444
AMPHETAMINE/DEXTROAMPHETA 30MG	2,416
METHAMPHETAMINE HCL 5MG	2,140

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VYVANSE 70MG	1,804
AMPHETAMINE/DEXTROAMPHETA 15MG	1,681
METHYLPHENIDATE HYDROCHLO 10MG	1,559
VYVANSE 50MG	1,534
HYDROCODONE/ACETAMINOPHEN 5-325MG	1,495
METHYLPHENIDATE HYDROCHLO 20MG	1,371
OXYCONTIN 40MG	1,320
METHADONE HCL 10MG	1,222
OXYCODONE HYDROCHLORIDE 30MG	1,163
VYVANSE 30MG	1,142
VYVANSE 40MG	1,089
METHYLPHENIDATE HYDROCHLO 54MG ER	947
MORPHINE SULFATE 15MG	903
AMPHETAMINE/DEXTROAMPHETA 10MG ER	895
METHYLPHENIDATE HYDROCHLO 5MG	868
CLONAZEPAM 0.5MG	839
MORPHINE SULFATE 30MG	798
ADDERALL XR 30MG	752
ZENZEDI 20MG	732
METHYLPHENIDATE HYDROCHLO 20MG ER	628
OXYCODONE/ACETAMINOPHEN 10-325MG	624
ADDERALL XR 20MG	590
ALPRAZOLAM 2MG	583
ALPRAZOLAM 1MG	579
LORAZEPAM 1MG	577
ADDERALL 30MG	532
ZOLPIDEM TARTRATE 10MG	526
VYVANSE 20MG	511
QUILLIVANT XR 25MG/5ML	498
VYVANSE 60MG	488
NORCO 10-325MG	456
ADDERALL XR 15MG	427
AMPHETAMINE/DEXTROAMPHETA 25MG ER	406
DEXTROAMPHETAMINE SULFATE 10MG ER	402
RITALIN 10MG	402
MORPHINE SULFATE ER 30MG/12	395
DEXTROAMPHETAMINE SULFATE 15MG ER	381
METHYLPHENIDATE HYDROCHLO 18MG ER	381
DEXMETHYLPHENIDATE HCL 10MG	377
ALPRAZOLAM 0.25MG	360
CLONAZEPAM 1MG	354
OXYCODONE HYDROCHLORIDE 5MG	354
ESZOPICLONE 3MG	340
METHYLPHENIDATE HYDROCHLO 10MG ER	330
MORPHINE SULFATE ER 60MG/12	324

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METHYLPHENIDATE HYDROCHLO 27MG ER	312
CONCERTA 36MG	303
ZOLPIDEM TARTRATE 5MG	301
VYVANSE 10MG	300
CONCERTA 54MG	269
OXYCODONE HYDROCHLORIDE 15MG	268
AMPHETAMINE/DEXTROAMPHETA 5MG	264
METHYLPHENIDATE HYDROCHLO 30MG LA	262
ALPRAZOLAM 0.5MG	259
CARISOPRODOL 350MG	249
OXYCONTIN 30MG	243
AMPHETAMINE/DEXTROAMPHETA 15MG ER	242
OXYMORPHONE HYDROCHLORIDE 20MG ER	240
XTAMPZA ER 36MG	240
OXYCODONE HCL ER 40MG	222
LORAZEPAM 0.5MG	207
METHYLPHENIDATE HYDROCHLO 20MG LA	203
ADDERALL XR 25MG	202
MODAFINIL 200MG	201
AMPHETAMINE/DEXTROAMPHETA 5MG ER	192
RITALIN LA 10MG	189
TRAMADOL HCL 50MG	188
DEXTROAMPHETAMINE SULFATE 10MG	172
DEXMETHYLPHENIDATE HCL ER 15MG ER	153
MORPHINE SULFATE ER 100MG/12	153
HYDROMORPHONE HCL ER 16MG ER	150
PERCOCET 10-325MG	136
DIAZEPAM 5MG	134
HYDROMORPHONE HCL 4MG	128
OXYMORPHONE HYDROCHLORIDE 15MG ER	128
DEXMETHYLPHENIDATE HCL 5MG	120
HYDROCODONE BITARTRATE/AC 5-300MG	120
MORPHINE SULFATE ER 15MG/12	120
DIAZEPAM 10MG	112
ADDERALL XR 10MG	110
BELSOMRA 15MG	110
ESZOPICLONE 2MG	106
OXYCONTIN 15MG	102
ZOLPIDEM TARTRATE ER 12.5MG	98
OXYCONTIN 20MG	94
TEMAZEPAM 30MG	89
NUCYNTA ER 150MG	88
ADDERALL XR 5MG	86
DEXMETHYLPHENIDATE HCL ER 20MG ER	80
LORAZEPAM 2MG	80

1	DEXMETHYLPHENIDATE HCL ER 25MG ER	78
2	TRIAZOLAM 0.25MG	78
3	ADDERALL 20MG	74
4	DEXMETHYLPHENIDATE HCL ER 40MG ER	74
5	DEXTROAMPHETAMINE SULFATE 5MG	74
6	CONCERTA 27MG	73
7	METHYLPHENIDATE HYDROCHLO 30MG CD	71
8	DAYTRANA 30MG/9HR	69
9	METHYLPHENIDATE HYDROCHLO 10MG LA	67
10	MORPHINE SULFATE ER 90MG ER	67
11	OXYCONTIN 60MG	66
12	DEXMETHYLPHENIDATE HYDROC 40MG ER	56
13	CLONAZEPAM 2MG	54
14	MYDAYIS 50MG	53
15	DEXMETHYLPHENIDATE HYDROC 30MG ER	52
16	CONCERTA 18MG	51
17	DEXMETHYLPHENIDATE HYDROC 2.5MG	44
18	ADDERALL 10MG	43
19	QUILLICHEW ER 20MG ER	36
20	ARMODAFINIL 250MG	34
21	QUILLICHEW ER 40MG ER	34
22	FENTANYL 50MCG/HR	33
23	LUNESTA 3MG	33
24	ZALEPLON 10MG	32
25	BELSOMRA 20MG	30
26	DEXMETHYLPHENIDATE HCL ER 10MG ER	30
27	ADHANSIA XR 55MG	29
28	METHYLPHENIDATE HYDROCHLO 40MG CD	26
	FENTANYL 100MCG/H	22
	DEXMETHYLPHENIDATE HCL ER 30MG ER	18
	BUTRANS 10MCG/HR	14
	<b>Total</b>	<b>69,886</b>

41. Respondent supplied patients with excessive doses of controlled substances by shipping to the patient much more than seven days before previous supplies would have been exhausted.

42. Early dispensing of controlled substances provides patients with excessive drugs that can endanger patients' health by increasing the risks of adverse effects or overdose.

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**b. Prescriptions written by Out of State Prescribers**

43. Controlled substances may only be prescribed by a California licensed prescriber when dispensed to patients in California.

44. Board Inspector searched the top 100 prescribers of controlled substances filled by Respondent and was able to confirm only three had active unrestricted licenses to prescribe in California during at least part of time for the time period reviewed as part of this investigation. The rest were not confirmed to practice medicine without restrictions in California.

45. Over 6,800 prescriptions were dispensed to patients in California from prescribers listed as having offices in other states.

46. The following were the totals of Schedule II controlled prescriptions filled by Respondent from out of state prescribers:

Drug	Number of prescriptions	Total quantity (Dosage units)
ADDERALL 15MG	3	270
ADDERALL 30MG	6	960
ADDERALL XR 10MG	22	1,830
ADDERALL XR 15MG	33	1,830
ADDERALL XR 20MG	42	3,300
ADDERALL XR 25MG	12	900
ADDERALL XR 30MG	48	3,398
ADDERALL XR 5MG	3	360
ADZENYS XR-ODT 12.5MG	2	180
AMPHETAMINE SULFATE 10MG	6	1,080
AMPHETAMINE/DEXTROAMPHETA 10MG	226	26,438
AMPHETAMINE/DEXTROAMPHETA 10MG ER	47	4,020
AMPHETAMINE/DEXTROAMPHETA 15MG	67	7,995
AMPHETAMINE/DEXTROAMPHETA 15MG ER	51	4,080
AMPHETAMINE/DEXTROAMPHETA 20MG	231	33,898
AMPHETAMINE/DEXTROAMPHETA 20MG ER	110	10,698
AMPHETAMINE/DEXTROAMPHETA 25MG ER	28	1,594
AMPHETAMINE/DEXTROAMPHETA 30MG	126	15,870
AMPHETAMINE/DEXTROAMPHETA 30MG ER	103	10,050
AMPHETAMINE/DEXTROAMPHETA 5MG	49	5,970
AMPHETAMINE/DEXTROAMPHETA 5MG ER	13	930
AMPHETAMINE/DEXTROAMPHETA 7.5MG	7	420
CODEINE SULFATE 30MG	1	28
CODEINE SULFATE 60MG	1	270



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CONCERTA 27MG	13	1,110
CONCERTA 36MG	15	1,620
CONCERTA 54MG	5	390
DAYTRANA 30MG/9HR	2	120
DESMETHYLPHENIDATE 10MG	9	1,050
DESMETHYLPHENIDATE 5MG	11	1,380
DESMETHYLPHENIDATE ER 10MG ER	8	510
DESMETHYLPHENIDATE ER 15MG ER	17	1,590
DESMETHYLPHENIDATE ER 25MG ER	2	120
DESMETHYLPHENIDATE ER 5MG ER	7	630
DESMETHYLPHENIDATE HYDROC 10MG ER	8	510
DESMETHYLPHENIDATE HYDROC 2.5MG	11	1,800
DESMETHYLPHENIDATE HYDROC 20MG ER	10	990
DEXTROAMPHETAMINE SULFATE 10MG	25	3,360
DEXTROAMPHETAMINE SULFATE 10MG ER	12	2,100
DEXTROAMPHETAMINE SULFATE 15MG ER	8	900
DEXTROAMPHETAMINE SULFATE 5MG	20	2,250
DEXTROAMPHETAMINE SULFATE 5MG ER	1	180
EMBEDA 20-0.8MG	1	180
FENTANYL 12MCG/HR	3	30
FENTANYL 25MCG/HR	5	55
FENTANYL 50MCG/HR	5	70
FENTANYL 75MCG/HR	2	60
FOCALIN 2.5MG	1	90
FOCALIN 5MG	1	90
FOCALIN XR 10MG	1	60
HYDROCODONE/AC 10-325MG	2	400
HYDROCODONE/AC 7.5-300	1	180
HYDROCODONE/HO 5-1.5/5	12	21,600
HYDROCODONE/ACETAMINOPHEN 10-325MG	83	18,350
HYDROCODONE/ACETAMINOPHEN 5-325MG	49	4,586
HYDROCODONE/ACETAMINOPHEN 7.5-325	3	188
HYDROCODONE/ACETAMINOPHEN 7.5-325M	22	2,506
HYDROCODONE/IBUPROFEN 7.5/200	12	360
HYDROMORPHONE 2MG	3	268
HYDROMORPHONE 8MG	4	2,070
HYDROMORPHONE HYDROCHLORI 32MG ER	4	720
HYSINGLA ER 40 MG	3	90
JORNAY PM 20MG ER	1	14
JORNAY PM 40MG ER	1	30
LEVORPHANOL TARTRATE 2MG	1	30
METHADONE 5MG	3	1,185
METHYLPHENIDATE HYDROCHLO 10MG	44	6,630
METHYLPHENIDATE HYDROCHLO 10MG CD	2	180

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METHYLPHENIDATE HYDROCHLO 10MG ER	2	360
METHYLPHENIDATE HYDROCHLO 10MG LA	6	525
METHYLPHENIDATE HYDROCHLO 18MG ER	36	3,571
METHYLPHENIDATE HYDROCHLO 20MG	43	5,690
METHYLPHENIDATE HYDROCHLO 20MG CD	1	90
METHYLPHENIDATE HYDROCHLO 20MG ER	3	360
METHYLPHENIDATE HYDROCHLO 20MG LA	5	390
METHYLPHENIDATE HYDROCHLO 27MG ER	31	1,890
METHYLPHENIDATE HYDROCHLO 30MG CD	3	180
METHYLPHENIDATE HYDROCHLO 30MG LA	3	245
METHYLPHENIDATE HYDROCHLO 36MG ER	56	4,448
METHYLPHENIDATE HYDROCHLO 40MG CD	4	360
METHYLPHENIDATE HYDROCHLO 40MG LA	5	450
METHYLPHENIDATE HYDROCHLO 54MG ER	24	2,010
METHYLPHENIDATE HYDROCHLO 5MG	28	4,410
METHYLPHENIDATE HYDROCHLO 60MG CD	3	270
MORPHINE SULFATE 15MG	3	240
MORPHINE SULFATE 30MG	1	84
MORPHINE SULFATE ER 15MG/12	8	1,518
MORPHINE SULFATE ER 30MG/12	8	716
MORPHINE SULFATE ER 60MG/12	1	360
MYDAYIS 25MG	1	90
MYDAYIS 50MG	5	330
NORCO 10-325MG	1	540
NUCYNTA 75MG	2	540
NUCYNTA ER 100MG	1	180
OPIUM 10MG/ML	1	270
OXYCODONE ER 10MG	1	20
OXYCODONE ER 20MG	1	180
OXYCODONE 10MG	23	2,960
OXYCODONE 15MG	41	3,810
OXYCODONE 20MG	22	2,556
OXYCODONE 30MG	8	860
OXYCODONE 5MG	35	7,495
OXYCODONE/ACETAMINOPHEN 10-325MG	70	9,957
OXYCODONE/ACETAMINOPHEN 5-325MG	48	6,671
OXYCODONE/ACETAMINOPHEN 7.5-325	5	580
OXYCONTIN 10MG	1	60
OXYCONTIN 20MG	3	360
OXYCONTIN 40MG	2	240
OXYCONTIN 60MG	1	60
OXYMORPHONE 10MG ER	1	40
OXYMORPHONE 15MG ER	6	360
QUILLICHEW ER 20MG ER	2	180

QUILLICHEW ER 40MG ER	2	180
QUILLIVANT XR 25MG/5ML	2	1,440
VYVANSE 10MG	12	1,080
VYVANSE 20MG	33	2,534
VYVANSE 30MG	60	4,844
VYVANSE 40MG	74	4,722
VYVANSE 50MG	87	6,735
VYVANSE 60MG	50	3,780
VYVANSE 70MG	99	8,041
ZENZEDI 20MG	1	30
<b>Total</b>	<b>2665</b>	<b>316,893</b>

47. The Board Inspector found that Respondent was shipping these out of state prescriptions to California patients without verification that the prescribers held active licenses in California.

48. Respondent did not provide the Board Inspector any documentation to show that a pharmacist interviewed each patient to determine the authenticity of the prescriptions written by out of state prescribers.

49. On or around August 24, 2021, Board Inspector notified Respondent that filling prescriptions for prescribers not licensed in California is illegal, and there is no exception to the law.

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50. In order to determine if Respondent had changed their practice of dispensing Schedule II controlled substances from out of state prescribers, Board Inspector reviewed Respondent's CURES reporting for the period of October 1, 2021 through November 29, 2021. As a result of the review the Board Inspector found the following Schedule II controlled substances were dispensed to California patients pursuant to prescriptions from prescribers who were unlicensed in California:

Date	Number	Patient	Patient City	Drug	Qty	Prescriber	Prescriber State	Prescriber CA license/status
10/07/21	135724176	PF	Needles	oxycodone 5 mg	60	C.R.	AZ	expired
11/04/21	136491108	PF	Needles	oxycodone 5 mg	60	C.R.	AZ	expired
10/21/21	749311354	AG	Los Angeles	Adderall XR 15 mg	30	K.C.	MA	None
11/08/21	750716149	TH	Los Angeles	amphetamine 10 mg	180	S.S.	NY	None
11/09/21	137117404	EL	San Diego	amphetamine 10 mg	60	A.K.	AZ	None

**c. Variation from prescriptions:**

51. As part of the investigation the Board Inspector reviewed pharmacy records and original prescription documents, and found that Respondent deviated from the prescription instruction and dispensed 55 prescriptions against prescribers' orders.

52. All 55 prescriptions that were dispensed against prescribers orders had clear prescriber instructions that the prescription "must last" a certain amount of time, or have a "maximum" amount per day that could be taken. Respondent dispensed these prescriptions early, and against prescribers orders.

53. Respondent did not provide anything to the Board Inspector to review that had any indication or notation of prior prescriber consent to deviate from the prescribers' orders.

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1 **CAUSES FOR DISCIPLINE**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Requirements for Dispensing Controlled Substance Prescriptions)**

4 54. Respondent is subject to disciplinary action for failing to comply with the  
5 requirements for dispensing controlled substance prescriptions, pursuant to Health and Safety  
6 Code sections 11164 and 11162.1, subdivision (a), Code section 4059, subdivision (a), CCR, title  
7 16, section 1761, and CFR, title 21, section 1306.4, by and through Code sections 4301,  
8 subdivisions (j) and (o), and 4156 as set forth in more detail above in paragraphs 31 through 53.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Failure to Exercise or Implement Corresponding Responsibility)**

11 55. Respondent is subject to disciplinary action under Code sections 4301, subdivisions  
12 (d), (j), and (o); 4306.5, subdivisions (a), (b), (c), and (d); 4126.5 and 4156; in conjunction with  
13 Health and Safety Code sections 11152, and 11153, subdivision (a); CCR, title 16, section 1761;  
14 and CFR, title 21, section 1306.04, in that Respondent failed to exercise or implement its best  
15 professional judgment or corresponding responsibility with regard to the dispensing or furnishing  
16 of controlled substances or dangerous drugs, or with regard to the provision of services, as set  
17 forth in more detail above in paragraphs 31 through 53.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Gross Negligence)**

20 56. Respondent is subject to disciplinary action for engaging in unprofessional conduct  
21 pursuant to Code section 4301, subdivision (c), for gross negligence, in that it operated in a  
22 manner that deviated from the standard of safe pharmacy practice as set forth in more detail  
23 above in paragraphs 31 through 53.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Clearly Excessive Furnishing of Controlled Substances)**

3 57. Respondent is subject to disciplinary action for engaging in unprofessional conduct  
4 pursuant to Code sections 4301, subdivision (d), 4126.5, and Health and Safety Code section  
5 11153, subdivision (a), for clearly excessive furnishing of controlled substances, as set forth in  
6 more detail above in paragraphs 31 through 53.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct- Violation of Applicable Pennsylvania Laws and Regulations**  
9 **Governing Pharmacy)**

10 58. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)  
11 and (o), on the grounds of unprofessional conduct, by and through Code section 4156, in that  
12 Respondent failed to comply with specific Pennsylvania regulation sections as follows:

13 a. Pennsylvania Code, Title 49, section 25.52, in that Respondent dispensed over 4,800  
14 controlled substance prescriptions with patterns of irregularities and red flags of abuse without  
15 ensuring the prescriptions were issued for a legitimate medical purpose in the usual course of  
16 professional practice.

17 b. Pennsylvania Code, Title 49, section 27.18, subdivision (t), in that Respondent  
18 dispensed over 2,100 schedule II-V controlled substance prescriptions early (at least seven days  
19 before due, but almost all were 10 days before due), and at least 55 prescriptions that were  
20 dispensed early in conflict with prescribers orders.

21 c. The facts and circumstances are described in more detail above in paragraphs 31-53,  
22 above.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct)**

25 59. Respondent is subject to disciplinary action under Code sections 4301, in that  
26 Respondent committed unprofessional conduct. Complainant refers to, and by this reference  
27 incorporates, the allegations as set forth in more detail above in paragraphs 31 through 58.

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1 **OTHER MATTERS**

2 60. Pursuant to Code section 4307, if discipline is imposed on Non Resident Pharmacy  
3 Permit Number NRP 680, issued to CVS Caremark PCS Pennsylvania Mail Pharmacy LLC to do  
4 business a CVS Caremark or IngenioRx Home Delivery, Thomas S. Moffatt, Jeffrey E. Clark,  
5 Sheelagh M. Beaulieu, and Kimberley M. DeSousa shall be prohibited from serving as a  
6 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for  
7 five years if Nonresident Pharmacy Permit Number NRP 680, issued CVS Caremark PCS  
8 Pennsylvania Mail Pharmacy LLC dba CVS Caremark is placed on probation or until the  
9 Nonresident Pharmacy Permit Number NRP 680 is reinstated if it is revoked.

10 **PRAYER**

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

13 1. Revoking or suspending Nonresident Pharmacy Permit Number NRP 680, issued to  
14 CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or  
15 IngenioRx Home Delivery;

16 2. Prohibiting CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as  
17 CVS Caremark or IngenioRx Home Delivery, Thomas S. Moffatt, Jeffrey E. Clark, Sheelagh M.  
18 Beaulieu, and Kimberley M. DeSousa from serving as a manager, administrator, owner, member,  
19 officer, director, associate, or partner of a licensee for five years if Nonresident Pharmacy Permit  
20 Number NRP 680 is placed on probation or until Nonresident Pharmacy Permit Number NRP 680  
21 is reinstated if Nonresident Pharmacy Permit Number NRP 680 issued to CVS Caremark PCS  
22 Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or IngenioRx Home  
23 Delivery is revoked;

24 3. Ordering CVS Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as  
25 CVS Caremark or IngenioRx Home Delivery to pay the Board of Pharmacy the reasonable costs  
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
27 section 125.3; and,

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

DATED: 10/10/2022

Signature on File  
\_\_\_\_\_  
ANNE SODERGREN  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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