

1
2
3
4
5
6
7
8
9

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

In the Matter of the Accusation Against:

Case No. 7402

RITE AID INC. dba RITE AID #5860
2640 Floral Avenue
Selma, CA 93722

**STIPULATION FOR
CONTINUING JURISDICTION**

Original Pharmacy Permit No. PHY 48295

Respondent.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that the following is true:

1. The parties to this agreement are **Anne Sodergren**, acting in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, and **Jermaine Smith**, Vice President, authorized representative of Rite Aid Inc.

2. On or about June 18, 2024, Rite Aid Inc. dba Rite Aid #5860, 2640 Floral Avenue, Selma, California 93662, (hereinafter "applicant") submitted an application to the Board for a change of ownership of Rite Aid Inc. dba Rite Aid #5860, 2640 Floral Avenue, Selma, California 93662, (Original Permit No. PHY 48295). The granting of the application would require the cancellation of Original Permit No. PHY 48295 issued to Rite Aid Inc. dba Rite Aid #5860, 2640 Floral Avenue, Selma, California 93662, and the issuance of a new original permit number to applicant pursuant to Business and Professions Code section 4201(f).

3. The existing permit (Original Permit No. PHY 48295) is currently the subject of a disciplinary order issued effective April 26, 2023, by the Board in the disciplinary matter entitled *In the Matter of the Accusation Against RITE AID INC. dba RITE AID #5860*, Board of Pharmacy Case No. 7402. A true and correct copy of the decision and order in this matter is attached hereto as **Exhibit A** and incorporated by this reference.

///

1 4. In exchange for processing and issuance of the new permit pursuant to the change
2 of ownership, applicant understands and agrees that the Board shall have continuing jurisdiction
3 over the new permit issued to applicant such that the disciplinary order issued by the Board in
4 Case No. 7402, including any terms and conditions and remaining tenure of probation, shall
5 carry forward and be applicable to the new permit issued to applicant. The Board hereby waives
6 any right it may have had to deny issuance of the new permit.

7 5. A portable document format (PDF) or facsimile signature on this document shall be
8 binding as an original signature. Parties agree to use of PDF or facsimile signatures in lieu of
9 original signatures for all purposes relevant to enforcement of this Stipulation.

10
11 Dated: _____

JERMAINE SMITH
Vice President

12
13
14 Dated: _____

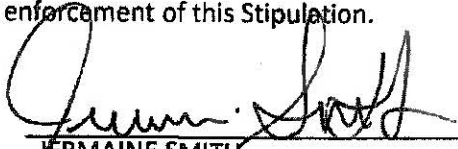
ANNE SODERGREN
Executive Officer
California Board of Pharmacy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. In exchange for processing and issuance of the new permit pursuant to the change of ownership, applicant understands and agrees that the Board shall have continuing jurisdiction over the new permit issued to applicant such that the disciplinary order issued by the Board in Case No. 7402, including any terms and conditions and remaining tenure of probation, shall carry forward and be applicable to the new permit issued to applicant. The Board hereby waives any right it may have had to deny issuance of the new permit.

5. A portable document format (PDF) or facsimile signature on this document shall be binding as an original signature. Parties agree to use of PDF or facsimile signatures in lieu of original signatures for all purposes relevant to enforcement of this Stipulation.

Dated: 8/29/2024


JERMAINE SMITH
Vice President

Dated: 08/29/2024

Sodergren,
Anne@DCA
ANNE SODERGREN
Executive Officer
California Board of Pharmacy

Digitally signed by
Sodergren, Anne@DCA
Date: 2024.08.29
11:51:14 -07'00'

Exhibit A

**Final Decision and Order
Board of Pharmacy Disciplinary Case No. 7402**

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

In the Matter of the Accusation Against:

RITE AID INC. dba RITE AID #5860, Respondent

Pharmacy Permit No. PHY 48295

Agency Case No. 7402

OAH No. 2022120588

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 26, 2023.

It is so ORDERED on March 27, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

RITE AID INC. dba RITE AID #5860, Respondent

Agency Case No. 7402

OAH No. 2022120588

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 11, 2023, from Sacramento, California.

Steve J. Pyun, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

John Kern, Ken Yood, and Daniel P. Kappes of the law firm Holland & Knight LLP represented respondent Rite Aid Inc. dba Rite Aid #5860. Sherry Yanez-Gregor, Assistant General Counsel, also represented respondent.

Evidence was received, and the record was left open to allow respondent to re-upload its exhibits into Case Center as separate files, respondent to submit written

argument about the appropriate discipline, and complainant to respond to respondent's argument about the appropriate discipline. Exhibits A through D and respondent's proposed order (Exhibit E), notice of intent to object to complainant's proposed order (Exhibit F), and objection to complainant's proposed order (Exhibit G) were received. Complainant's correspondence outlining its recommended discipline was received (Exhibit 15). The record was closed and the matter submitted for decision on January 20, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Board issued respondent Pharmacy Permit Number PHY 48295 on September 11, 2006. The permit expires April 1, 2023, unless renewed. There is no history of prior discipline of the permit.

2. Complainant signed the Accusation seeking to discipline respondent's permit on December 1, 2022, solely in her official capacity. The Accusation alleges respondent engaged in unprofessional conduct by failing to maintain its premises rodent-free and in compliance with operational standards.

Background

3. Respondent is a combination retail store and pharmacy owned and operated by Rite Aid Inc. (Rite Aid). It is located at 2640 Floral Avenue in Selma, California. Selma is a small, rural city in Fresno County. Because of Selma's location and rural population, respondent's customers tend to be older, have chronic health conditions, and take multiple medications.

4. Respondent is one of only a few pharmacies in Selma, and the closest Rite Aid is about 11 miles away. Respondent fills approximately 3,000 prescriptions each week. In 2021, it filled more than 135,000 prescriptions.

5. Respondent plays an integral role in its customers' healthcare. In addition to dispensing prescription medication, it counsels customers, advises medical staff, and plays an essential role in helping prevent medication errors and identifying drug interactions. Additionally, in fiscal year 2022, respondent provided over 10,000 immunizations.

Complaint and Board Investigation

6. The Board received the following anonymous online complaint about respondent on October 7, 2022:

There is a huge rat problem in the store and in the pharmacy. Estimating that it started back in June, there is rat feces & urine on the pharmacy supplies and all over the warehouse [sic]. The store and the pharmacy smell like rat urine and the rat dropping[s] are everywhere on the carpet in the pharmacy. The feces & pee is [sic] cleaned by employees, but [they are] very toxic to clean especially the urine. We are working with fans because it smells so bad. I'm concerned for my health, my co-workers, and customers. Customers have complained of hearing the rat babies cry/screech at one point because that is how loud they were, customers have seen rats running down the aisle, the rats are eating the food and damaging the store by

making holes and nests. Corporate and the health department have known but I feel like not enough is being done. The problem has gotten so much worse. Employees have complained numerous times, but I feel like it falls on deaf ears. Please help[.] Thank you[.]

7. Karla Retherford-Parreira, Pharm.D., has been a Board investigator since 2011. She has been licensed as a pharmacist since 1991. Her professional experience as a pharmacist includes 20 years in retail pharmacy, 16 of those as a Pharmacist-in-Charge (PIC).

8. The anonymous complaint was assigned to Dr. Retherford-Parreira for investigation. She inspected respondent on October 12, 2022. Upon entering the retail store, she saw rodent droppings on the floor. She walked through the retail store to the back, where the pharmacy is located. She introduced herself to PIC Venugopal Rajasekaren and explained she was there to conduct an inspection in response to a complaint.

9. As Dr. Retherford-Parreira began her inspection, she noticed the pharmacy was very dirty and cluttered. The shelving used to store medication was dusty, and the sink area had a sticky rodent trap on the counter. She spoke with three pharmacy employees who reported seeing a rat in the pharmacy the previous week and one who reporting seeing a rat a few days prior to the inspection.

10. Dr. Retherford-Parreira noticed a strong smell of urine as she walked throughout the pharmacy, especially near the drive-thru window and the front pickup/drop-off counter. A portable fan was turned on to help with the smell. The floor was carpeted, and the carpet had several stains consistent with rodent urine.

Several carpet tiles had ripped edges that looked like they had been chewed. Rodent droppings were found in drawers, on shelves, under counters, and on the floor.

11. There were three doors leading into the pharmacy, all of which had visible gaps beneath them. Several counters had holes beneath them, which appeared to be for electrical wiring and/or computer cables. There were rodent droppings near several of the holes. An employee lifted one of the ceiling tiles, and debris that appeared to be rodent droppings fell from the ceiling.

12. Dr. Retherford-Parreira exited the pharmacy to inspect the retail store. As she did, she found rodent droppings in the pharmacy waiting area. In the retail store, she found rodent droppings in all the aisles she walked down and the warehouse. Dr. Retherford-Parreira spoke to an employee cleaning the human food aisle and was told that was the second time he had to clean the aisle that day. He also explained that a nest containing the mother and babies was recently found under the greeting card display.

13. Dr. Retherford-Parreira returned to the pharmacy and spoke with PIC Rajasekaren. PIC Rajasekaren estimated that the rodent problem began around March. He showed Dr. Retherford-Parreira a log of employee and customer sightings of rodents or rodent activity, which documented 54 separate sightings between January 13 and August 24, 2022. PIC Rajasekaren explained that he had reported the rodent problem multiple times to Dexter Mason, a Senior Specialist with Rite Aid's Environmental Compliance Safety and Sanitation Department.

14. Dr. Retherford-Parreira concluded her inspection and issued respondent a notice of non-compliance for not maintaining the pharmacy in a manner that was

clean, orderly, and free from rodents. She found the smell of urine nauseating and difficult to tolerate.

Interim Suspension Order

15. Based on the conditions Dr. Retherford-Parreira found during her inspection, complainant filed a petition for an interim order suspending respondent's permit pending the filing and resolution of the Accusation. And because of the risk of serious injury to public health, safety, and welfare if respondent were allowed to continue operating pending a hearing on the petition, complainant sought an ex parte order temporarily suspending the permit until a hearing could be held on the petition.

16. Dr. Retherford-Parreira signed a declaration in support of complainant's request for ex parte relief, in which she described some of the dangers of exposure to rodent feces as follows:

The cleaning and removal of vermin excrement while a pharmacy remains open for business is a health hazard. Medications – meant to be ingested by patients – will constantly be exposed to fecal materials throughout the cleaning of the pharmacy. Patients walking up to the pharmacy to pick up medications or consult with the pharmacist during this time can also be exposed [to] fecal materials through the air. Breathing in fecal material can expose patients and pharmacy staff to Hantavirus pulmonary syndrome – a serious infectious disease that can cause to [sic] life-threatening breathing problems. It can also expose pharmacy staff and patients to a litany of other

health issues, including lymphocytic choriomeningitis (LCMV), Tularemia, and Salmonella.

17. Complainant gave PIC Rajasekaren verbal notice of the October 28, 2022 ex parte hearing and emailed the petition and supporting documents to him and Rite Aid's Regional Pharmacy Leader, Lauren Kim, Pharm.D., three days prior to the hearing. No one represented respondent at the hearing, and an ex parte order suspending its permit until a hearing could be held on the petition was issued.

18. Respondent appeared at the November 18, 2022 hearing on complainant's petition for an interim suspension order and produced evidence of the significant steps it had taken to remediate its rodent infestation. The temporary suspension order was vacated, respondent's permit was suspended, and the suspension was stayed on the conditions that respondent: (1) submit weekly reports to the Board consisting of Rentokil's inspection reports, cleaning log, and rodent citing log; and (2) report any incident involving rodent-related cleanliness to the Board within 24 hours of occurrence. The stayed suspension remains in effect until the Board issues a final decision on the Accusation.

Respondent's Evidence at Hearing

19. Respondent did not challenge the factual or legal basis for discipline alleged in the Accusation but instead focused its presentation and argument on demonstrating that it: (1) took its rodent infestation seriously; (2) took immediate steps to eliminate the infestation once it learned about it; (3) appears to have been successful; and (4) implemented policies and procedures to minimize the risk of a future infestation and to immediately discover and remedy any such infestation if one occurs.

CATHERINE BARNES'S DECLARATION

20. Ms. Barnes has been Rite Aid's Vice President of Facilities Management since September 20, 2021. She oversees approximately 2,329 Rite Aid locations throughout the country. She is responsible for a team of 33 employees who oversee repairs and maintenance, planned programs, energy and utility management, surplus locations, and capital planning.

21. Rite Aid implemented pest control measures to detect and eliminate pests, including rodents, at respondent's location before the events giving rise to this action. This included monthly visits from the pest control company Rentokil because rodents are common pests in rural, agricultural communities such as Selma.

22. Ms. Barnes learned that a rodent had been spotted inside respondent on August 10, 2022, and her staff took immediate remedial steps, which included increasing Rentokil's visits to two times per week. Rentokil first attempted to control the problem with mechanical and glue traps.

23. When those methods proved ineffective, Rentokil recommended a multi-step process that included rodent-proofing, sanitation, and population reduction. It consulted with another pest control company, and both concluded that fumigating respondent's entire location was the only option for effectively eliminating the rodent problem.

24. Respondent implemented Rentokil's recommended multi-step process by having all entry points for rodents identified, plugged or fixed, and baited with pesticide. A cage was manufactured and installed over the pharmacy's records, door sweeps were installed on the bottom of all pharmacy doors to eliminate the gaps

between the bottom of the doors and the thresholds, and all holes underneath counters were plugged or fixed.

25. Rite Aid hired an industrial sanitation company to sanitize respondent's retail store and pharmacy. The technicians arrived at night on October 25, 2022, and worked through the night removing all carpeting, removing and replacing all ceiling tiles in the pharmacy, cleaning and sanitizing the medication storage and packaging areas, and cleaning and sanitizing all hard surfaces such as shelving, floors, and countertops.

26. Between October 31 and November 4, 2022, respondent was closed to the public while employees removed items that could be damaged during fumigation. Between November 5 and 8, 2022, Rentokil tented, fumigated, aerated, cleaned, sanitized, and removed all dead rodents from respondent's location. Rentokil returned the location back to respondent on November 9, 2022.

27. To prevent future recurrence of pest control problems and ensure timely reporting of pest control issues and appropriate responses, Rite Aid "developed a more robust communication plan to support better educating staff regarding internal controls and policies that are part of the Rite Aid Integrated Pest Management program already in place." This includes monthly reports to "Divisional leadership" about any existing pest control issues and the status of remediation.

28. Rite Aid already had in place policies and procedures for monitoring pest control activities and for employees to report any pest sightings to the appropriate people. Since the underlying problems, however, it took steps to further educate its employees on the proper use of the Facilities Management Work Order System, ServiceChannel, to escalate any concerns. Additionally, it made further efforts "to

encourage future monitoring and reporting by employees of pests at the location, including the pharmacy.”

29. At respondent’s specific location, Rite Aid has continued its weekly pest control preventative maintenance program with Rentokil. The program includes: (1) checking in with the manager on duty and walking the store to check all equipment, e.g., traps, glue boards, etc.; (2) reviewing the integrated pest management logbook for any notes; (3) identifying any existing sanitation issues; (4) identifying the cause and/or any nesting areas if there was an active infestation or increase in activity; and (5) replenishing traps and bait stations.

30. Additionally, employees are required to follow Rite Aid’s Integrated Pest Management program and partner with Rentokil to conduct weekly self-assessments to detect any pest activity. A log was created for employees to document any pest activity for Rentokil’s technician to review during the next visit. Rite Aid’s Facilities and Compliance teams have weekly conference calls with Rentokil to discuss any pest activity and plans for remediation.

31. Respondent increased its sanitation practices so it is easier to detect any pest activity. It took steps to ensure all food sources are properly inspected, cleaned, and stored to reduce the likelihood of attracting rodents. Respondent changed its method of storing packaged food items to allow for easier inspection for signs of rodents.

DEBORAH HURLEY’S EMAILS AND TESTIMONY

32. Ms. Hurley has been a Senior Specialist Boards of Pharmacy in Rite Aid’s Government Affairs Department since December 1985. Her duties have remained

“pretty much the same” over the years, except Rite Aid has expanded into new states. It currently has a presence in 17 states across the country.

33. Ms. Hurley has known Dr. Retherford-Parreira “for a long time.” She believes they have a strong working relationship and neither hesitates to contact the other if she needs something or there is a problem.

34. Ms. Hurley emailed Dr. Retherford-Parreira two days after the inspection to acknowledge receipt of the inspection report and explain that respondent had increased its service with Rentokil. She also explained respondent’s location would be thoroughly cleaned and sanitized and the carpeting replaced.

35. Four days later, Ms. Hurley sent another email confirming that a cage was built and installed over the prescription records, door sweeps were installed underneath all doors in the pharmacy, the holes underneath counters were plugged or repaired, and Rentokil was monitoring traps and bait stations for further activity. She also explained that sanitation and carpet removal needed to be done overnight and a pharmacist was required to be present for security reasons. She anticipated the work being completed within the next few days.

36. At hearing, Ms. Hurley confirmed that the carpet was replaced in the pharmacy, but she could not recall exactly when. She did not send Dr. Retherford-Parreira an email confirming that the carpet had been replaced.

JERMAINE SMITH’S TESTIMONY

37. Mr. Smith is Rite Aid’s Vice President of Government and Regulatory Affairs. He received a copy of the ex parte order temporarily suspending respondent’s permit pending a hearing on the underlying petition. Though the order required

closure of only the pharmacy, Rite Aid decided to close the retail store as well while the rodent infestation was remediated.

38. Mr. Smith estimated that respondent was closed to the public for almost 28 days and lost approximately \$900,000, primarily through the loss of retail sales. Rite Aid spent approximately \$113,000 remediating the rodent infestation. Respondent reopened to the public on November 18, 2022. Neither Rentokil nor respondent's staff has found any rodent activity since the reopening. Additionally, Rite Aid is not aware of any of respondent's staff or a member of the public having been harmed by the infestation.

39. Mr. Smith explained that though the financial loss Rite Aid suffered was tremendous, it was important to bring respondent back into operation. Rite Aid's corporate leaders now have a clear understanding of the cost associated with not complying with the statutes, rules, and regulations governing pharmacies.

40. Rite Aid's corporate leaders also have a better understanding of the critical role respondent plays in serving its customers' pharmaceutical needs. Respondent was required to post a notice of its suspension, which also directed customers to the nearest Rite Aid. Because that location was approximately 10 miles away, Rite Aid provided free delivery service for those who could not go to the alternate location.

LAUREN KIM, PHARM.D.'S, DECLARATION AND TESTIMONY

41. Dr. Kim has been Rite Aid's Regional Pharmacy Leader for Los Angeles County for the last four years. Respondent is not within Dr. Kim's jurisdiction, but it was when she temporarily filled in as the Interim Regional Pharmacy Leader for Fresno

County after the person who held that position “suddenly” quit the last week of October 2022.

42. Dr. Kim was out of the office and did not have access to her emails when the petition for interim suspension order and supporting documents were emailed to her. She opened the email upon her return and immediately forwarded the documents to Rite Aid. She discussed with PIC Rajasekaren the importance of reading emails in a timely manner and forwarding important information to the appropriate people.

Analysis

CAUSE FOR DISCIPLINE

Failure to Maintain Clean and Rodent-Free Premises

43. It was undisputed that respondent failed to keep its pharmacy clean and free from rodents. On October 12, 2022, Dr. Retherford-Parreira inspected respondent and found it “to be in a filthy and unsanitary condition.” She observed rodent feces throughout the retail store and pharmacy. The shelves housing prescription medication “were very dusty,” and there was a rodent trap on the counter near the sink. There was such a strong smell of rodent urine in the pharmacy that it “was nauseating to [her]” and “difficult to tolerate.” The carpet in the pharmacy had stains consistent with rodent urine, and several carpet tiles had ripped edges consistent with having been chewed on. She reviewed a log documenting 54 separate sightings of rodents or rodent activity in respondent’s retail location and pharmacy between January 13 and August 24, 2022.

Failure to Maintain Operational Standards

44. Respondent failed to maintain its pharmacy so that drugs were safely and properly prepared, maintained, secured, and distributed and it could safely practice pharmacy in an unobstructed area. Respondent did not dispute that the circumstances described in Factual Finding 43 constituted a failure to maintain such operational standards. Dr. Retherford-Parreira persuasively explained the health hazards associated with exposure to rodent feces.

APPROPRIATE DISCIPLINE

45. The Board has adopted "Disciplinary Guidelines" (rev. 2/2017) for determining the appropriate discipline when a licensee violates the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) or the regulations implementing it. (Cal. Code Regs., tit. 16, § 1760.) The Board has directed, "These guidelines are to be followed in Board of Pharmacy disciplinary actions."

46. The Disciplinary Guidelines provide the following relevant criteria for determining the appropriate discipline: (1) actual or potential harm; (2) prior history of discipline, including any warnings, such as citations, letters of admonishment, or correction notices; (3) number of current violations and the nature and severity of the underlying acts; (4) aggravating, mitigating, and rehabilitation evidence; (5) amount of time that has elapsed since the misconduct; and (6) lack of knowledge of and participation in the misconduct. "No single one or combination of the above factors is required to justify the minimum and/or the maximum penalty . . . as opposed to an intermediate one."

47. The Disciplinary Guidelines categorize different violations of the Pharmacy Law or the regulations implementing it into one of four categories based on

the seriousness of the underlying conduct. Category I violations are the least serious, but still pose a potential risk of public harm. Category IV violations are reserved for the most serious violations and generally involve the dispensing or distributing of dangerous drugs, dangerous devices, and/or controlled substances. The Disciplinary Guidelines provide for a range of discipline for each Category, except Category IV. Revocation is the only discipline recommended for a Category IV violation.

48. The Disciplinary Guidelines expressly identify "repeat or serious failure(s) to . . . ensure security and sanitation of premises, dangerous drugs and/or dangerous devices or controlled substances" as a Category II violation. The proposed discipline for such violation ranges from: (1) revocation, revocation stayed, and probation with standard terms and conditions and any appropriate optional terms and conditions; to (2) outright revocation. When probation is imposed, the recommended length is three years, except five years is recommended when the violation involves the self-administration or diversion of dangerous drugs, dangerous devices, and or controlled substances.

49. Respondent committed only two violations of the Pharmacy Law and the regulations implementing it, but the underlying conduct occurred from at least January 13 through October 12, 2022. Respondent's misconduct was egregious. Dr. Retherford-Parreira persuasively described the deplorable conditions that existed when she inspected respondent's retail store and pharmacy on October 12, 2022. The smell of rodent urine was so strong staff used a fan to circulate the air and Dr. Retherford-Parreira became nauseous. She reviewed a log documenting 54 separate incidents of a staff member or a customer seeing a rodent or seeing or hearing evidence of rodent activity between January 13 and August 24, 2022. Though there was no evidence that anyone suffered any actual harm from the rodent infestation, Dr.

Retherford-Parreira persuasively explained the substantial risk of harm the infestation posed to public health, safety, and welfare.

50. Dr. Retherford-Parreira's documentation that PIC Rajasekaren reported the rodent sightings to Dexter Mason, a Senior Specialist with Rite Aid's Environmental Compliance Safety and Sanitation Department, was uncontroverted and persuasive. However, either PIC Rajasekaren did not say or Dr. Retherford-Parreira did not document when Mr. Mason was first notified. On the other hand, Ms. Barnes persuasively explained that Rite Aid did not learn about respondent's rodent problem until August 10, 2022, despite Rite Aid having an Integrated Pest Management plan and protocols for reporting pest activity in place. Additionally, Dr. Kim persuasively explained why neither respondent nor Rite Aid appeared at the October 28, 2022 hearing.

51. Once Rite Aid was notified, immediate steps were taken to increase the frequency of Rentokil's inspections. When increased inspections proved to be ineffective, Rite Aid hired a contractor to repair or seal all potential points of entry for rodents, clean and sanitize respondent's retail store and pharmacy, and replace ceiling tiles and carpeting in the pharmacy. It also took the unusual step of shuttering respondent's entire location for several days while it was fumigated, aerated, cleaned, sanitized, and all dead rodents were removed. Respondent has continued its weekly inspections with Rentokil since that time, and there have been no signs of any pest activity. Respondent has no history of prior discipline or prior warnings of any nature.

52. Respondent demonstrated its continued ability to practice pharmacy in a manner consistent with public health, safety, and welfare, subject to Board supervision. Given the steps taken to remediate the rodent infestation, the minimum discipline recommended in the Disciplinary Guidelines is sufficient to protect the public.

Request for Costs of Investigation and Enforcement

53. Pursuant to Business and Professions Code section 125.3, complainant requested that respondent reimburse the Board \$10,708.25 for its costs of investigation and enforcement. That sum consists of \$6,594.50 the Board paid for Dr. Retherford-Parreira's time investigating this matter, and \$4,113.75 it incurred for the Office of the Attorney General's time prosecuting this matter.

54. Complainant introduced a Certification of Costs of Investigation by Agency she signed certifying that the Board paid \$6,594.50 for Dr. Retherford-Parreira's investigation. Attached to the Certification was a Certification of Investigation Costs: Declaration of Karla Retherford-Parreira in which Dr. Retherford-Parreira itemized that amount by task performed, time spent on each task, and her hourly billing rate.

55. Complainant also introduced a Certification of Prosecution Costs: Declaration of Steve J. Pyun in which Mr. Pyun certified that the Office of the Attorney General charged the Board \$4,113.75 for the time its employees spent enforcing this matter. Mr. Pyun attached a document entitled "Matter Time Activity By Professional Type" to his Certification, which itemized the Office of the Attorney General's charges by employee, date, task performed, time spent on each task, hourly rate charged, and total amount charged for each task.

56. Respondent did not object to complainant's evidence of costs. Nor did it introduce any evidence of its ability or inability to pay costs, other than the cost of remediation and its estimated losses during the suspension of its permit.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each ground for discipline alleged in the Accusation by clear and convincing evidence. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171 [the Board has the burden of proving the grounds for discipline alleged in the Accusation “by clear and convincing evidence”].) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

OPERATIONAL STANDARDS AND SECURITY

2. A pharmacy is required to “maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed” and must include “sufficient . . . unobstructed area to accommodate the safe practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1714, subd. (b).) Additionally, a pharmacy must be “maintained in a clean and orderly condition” and “shall be . . . free from rodents and insects . . .” (*Id.*, subd. (c).)

AUTHORITY TO DISCIPLINE LICENSES

3. The Board has authority to discipline a license for violations of the Pharmacy Law and/or the regulations implementing it by revoking the license, suspending it, or placing it on probation. (Bus. & Prof. Code, § 4300, subds. (a) & (b)(2).) "'License' means and includes any license, permit, registration, certificate, or exemption issued by the [B]oard" (Bus. & Prof. Code, § 4032.) The purpose of an administrative proceeding for the discipline of a professional license is public protection, not punishment. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) And the Board's "highest priority" is public protection. (Bus. & Prof. Code, § 4001.1.) The Board is required to consider its Disciplinary Guidelines when deciding the appropriate discipline. (Cal. Code Regs., tit. 16, § 1760.)
Furthermore,

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the [B]oard, in its sole discretion, determines that the facts of the particular case warrant such a deviation

(Ibid.)

CAUSE FOR DISCIPLINE

4. A pharmacy permit may be disciplined if the holder has engaged in "unprofessional conduct." (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes violating any provision of the Pharmacy Law or the regulations implementing it. (*Id.*, subd. (o).)

5. Respondent failed to maintain its pharmacy in a clean and orderly condition and free from rodents as discussed in Factual Finding 43. Therefore, cause exists to discipline its permit pursuant to Business and Professions Code section 4301, subdivision (o), as that statute relates to California Code of Regulations, title 16, section 1714, subdivision (c).

6. Respondent also failed to maintain its pharmacy so that drugs could be safely and properly prepared, maintained, secured, and distributed and it could safely practice pharmacy in an unobstructed area as discussed in Factual Finding 44. Therefore, cause exists to discipline its permit pursuant to Business and Professions Code section 4301, subdivision (o), as that statute relates to California Code of Regulations, title 16, section 1714, subdivision (b.)

PROHIBITION AGAINST SERVING IN OWNERSHIP OR MANAGERIAL ROLE

7. The holder of a permit that has been placed on probation “shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee” for up to five years. (Bus. & Prof. Code, § 4307, subd. (a)(1).) Cause exists to place respondent’s permit on probation for the reasons explained in Legal Conclusions 5 and 6. Therefore, cause also exists pursuant to Business and Professions Code section 4307, subdivision (a)(1), to prohibit respondent from serving in an ownership or managerial role of another permittee.

Conclusion

8. Cause exists to discipline respondent’s permit for the reasons explained in Legal Conclusions 5 and 6, individually and collectively. Considering all the evidence, public health, safety, and welfare is best served by allowing respondent to continue

practicing pharmacy while being monitored by the Board for the reasons explained in Factual Findings 45 through 52. Therefore, respondent's permit should be placed on probation as specified further in the Order below.

9. Respondent's argument that complainant seeks relief it waived at hearing by proposing three years' probation for the first time in its post-hearing brief is disingenuous. Respondent attached a transcript of a portion of complainant's closing argument to its post-hearing brief. The transcript shows that complainant argued in favor of appropriate discipline "within the Board of Pharmacy's disciplinary guidelines." In turn, the Disciplinary Guidelines recommend a minimum of three years' probation with standard terms and conditions for respondent's violations.

10. Respondent argues that complainant's proposed discipline "is impermissibly vague" because several of the Board's standard terms and conditions of probation are undefined. For example, respondent argues the requirement that respondent "obey all laws" would "leave the parties . . . guessing as to what conduct is permitted, and what conduct is not." But it concedes it "is already bound to obey all laws."

11. Respondent further argues that the Board's standard terms and conditions of probation are overbroad because "the Board *never* specifically defines the wrong it wants to enjoin . . ." and it seeks to enjoin past conduct. (Emphasis original.) Complainant is not seeking any injunctive relief, and respondent failed to point to a specific term and condition of probation that proves otherwise.

Award of Costs

12. An order resolving a disciplinary proceeding in complainant's favor may require respondent to pay the Board's reasonable investigation and prosecution costs. (Bus. & Prof. Code, § 125.3, subd. (a).)

A certified copy of the actual costs . . . signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(*Id.*, subd. (c).)

13. Reasonable investigation and enforcement costs may be established by "[d]eclarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by a Board employee, the declaration "may be executed by the [Board] or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." (*Id.*, subd. (b)(1).) For services provided by someone other than a Board employee, "the [d]eclaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service." (*Id.*, subd. (b)(2).)

14. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors for consideration in determining the

reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of its position; 3) whether the licensee raised a colorable challenge to the proposed discipline; 4) the licensee's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

15. Complainant produced prima facie evidence of the Board's reasonable investigation and enforcement costs. (Bus. & Prof. Code, § 125.3, subd. (c); Cal. Code Regs., tit. 10, § 1042, subd. (b)(1), (2).) Respondent did not rebut that evidence. The costs of remediating the rodent infestation and the monetary losses incurred during the suspension of respondent's permit were incurred because of its misconduct and do not justify reducing the Board's cost award. Considering all the evidence and the *Zuckerman* factors, the entire amount of costs complainant requested is reasonable and awarded as set forth in the Order below.

ORDER

1. Pharmacy Permit Number PHY 48295 issued to respondent Rite Aid Inc. dba Rite Aid #5860 is revoked; however, the revocation is stayed and the permit is placed on probation for three years on the following terms and conditions:

a. **Definition of "Respondent."** For the purposes of these terms and conditions, "respondent" shall refer to Rite Aid Inc. dba Rite Aid #5860. All terms and conditions stated herein shall bind and be applicable to the licensed premises and 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 executive officer with authority to act on behalf of and legally bind the licensed entity.

b. **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 license 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.

c. **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. 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.

d. **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. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

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

f. **Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$10,708.25. Respondent shall be permitted to pay

these costs in a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

g. **Probation Monitoring Costs.** Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

h. **Status of License.** Respondent shall, at all times while on probation, maintain a current pharmacy permit with the Board. Failure to maintain current licensure shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

i. **License Surrender While on Probation/Suspension.** Following the effective date of this decision, should respondent wish to discontinue business, respondent may tender the premises license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

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

Respondent shall also, within ten (10) days of notification by the Board that the surrender is accepted, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, respondent shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

Respondent may not apply for any new license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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

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

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

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

l. **Owners and Officers: Knowledge of the Law.** Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and all of its officers, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

m. **Premises Open for Business.** Respondent shall remain open and engaged in its ordinary business as a pharmacy in California for a minimum of 300 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation, unless respondent is informed otherwise in writing by the Board or its designee. If respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 300 hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at minimum all of the following: the date(s) and hours respondent was open; the reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on which respondent will resume business as required. Respondent shall further notify the Board in writing within ten (10) days following the next calendar month during which respondent is open and engaged in its ordinary business as a pharmacy in California for a minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

n. **Posted Notice of Probation.** Respondent shall prominently post a probation notice provided by the Board or its designee in a place conspicuous to and readable by the public within two (2) days of receipt thereof from the Board or its designee. Failure to timely post such notice, or to maintain the posting during the entire period of probation, shall be considered a violation of probation.

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

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

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

p. **Completion of Probation.** Upon written notice by the Board or its designee indicating successful completion of probation, respondent's license will be fully restored.

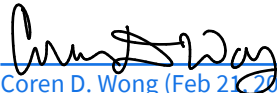
q. **Notice of Rodent Activity.** Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- any sighting of a rodent or of rodent activity at respondent's location; or
- any sanitation issued related to the presence of rodents at respondent's location.

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

2. Respondent Rite Aid Inc. dba Rite Aid #5860 shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of another licensee for three years or until Pharmacy Permit Number PHY 48295 is fully restored, whichever is sooner.

DATE: February 21, 2023


Coren D. Wong (Feb 21 2023 16:27 PST)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 STEVE J. PYUN
Deputy Attorney General
4 State Bar No. 253563
2550 Mariposa Mall, Room 5090
5 Fresno, CA 93721
Telephone: (559) 705-2336
6 Facsimile: (559) 445-5106
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 7402

13 **RITE AID INC. dba RITE AID #5860**
2640 Floral Avenue
14 Selma, CA 93662

ACCUSATION

15 **Pharmacy Permit No. PHY 48295**

16 Respondent.

17
18
19 **PARTIES**

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

22 2. On or about September 11, 2006, the Board of Pharmacy issued Pharmacy Permit
23 Number PHY 48295 to Rite Aid Inc. dba Rite Aid #5860 (Respondent). On October 28, 2022,
24 Respondent's Pharmacy Permit was suspended pursuant to an interim suspension order in Case
25 No. 7402. On November 18, 2022, the prior interim suspension was vacated. The Pharmacy
26 Permit was again suspended; however, the suspension was stayed so long as Respondent
27 complied with certain restrictions and conditions. Those restrictions and conditions shall remain
28 in place until a decision has been rendered on this Accusation matter, pursuant to Business and

1 Professions Code section 494, subdivision (f). The Pharmacy Permit was in full force and effect
2 at all times relevant to the charges brought herein and will expire on April 1, 2023, unless
3 renewed.

4 JURISDICTION

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

8 4. Section 4011 of the Code provides that the Board shall administer and enforce both
9 the Pharmacy Law [Code sections 4000 *et seq.*] and the Uniform Controlled Substances Act
10 [Health & Safety Code sections 11000 *et seq.*].

11 5. Section 4300 of the Code states, in pertinent part, that “[e]very license issued may be
12 suspended or revoked.”

13 6. Code section 4032 states, “‘License’ means and includes any license, permit,
14 registration, certificate, or exemption issued by the board and includes the process of applying for
15 and renewing the same.”

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY PROVISIONS

22 8. Code section 4301 states, in pertinent part:

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

26 ...

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 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.

...

9. Section 4307 of the Code provides as follows:

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

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

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

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

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1714, states, in pertinent part:

...

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

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

COST RECOVERY

11. Section 125.3 of the Code provides, 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

1 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FACTUAL ALLEGATIONS**

5 12. On or about October 7, 2022, the Board received an anonymous complaint from an
6 employee at Rite Aid Pharmacy #5860. The employee reported that there had been a rat
7 infestation in the pharmacy for several months. Rat feces and urine had been found all over the
8 store and pharmacy, including on pharmacy supplies. According to the employee, the problem
9 had been ongoing for several months despite repeated complaints from employees and customers.

10 13. Board Inspector KRP conducted an inspection of Rite Aid #5860 on October 12,
11 2022. During her inspection, she met with and was assisted by Pharmacist-In-Charge (PIC) RV
12 and Pharmacy District Manager SLF. PIC RV stated that he had reported the rodent infestation in
13 the store several times in past months to store management. PIC RV provided three photographs
14 that he had taken on or about October 8, 2022, depicting live rats inside Rite Aid #5860.

15 14. During her inspection, Inspector KRP observed Rite Aid #5860 to be in a filthy and
16 unsanitary condition. She observed rat droppings throughout the pharmacy and main store,
17 including on shelves and in drawers containing pharmaceutical products and food products. She
18 observed rat droppings in every aisle she walked down in the main store area. She detected a
19 strong smell of urine in the pharmacy. A fan was running in the pharmacy and had been set up to
20 help reduce the smell, according to employees at Rite Aid #5860. Inspector KRP observed stains
21 that appeared to be urine stains on the carpet in several areas. She found carpet with ripped edges
22 in several areas. She also observed several areas, including shelves and cabinets containing
23 pharmaceutical products that were messy, cluttered, and filthy with dirt and debris.

24 15. During her inspection, Inspector KRP found gaps under the entrance doors and holes
25 under counters in the pharmacy that led underground, which could have been entry points for rats.
26 PIC RV advised that a pest control company had treated Rite Aid #5860 regularly for several
27 months, but that the rat infestation had continued unabated.

28

1 **PRAYER**

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

4 1. Revoking or suspending Pharmacy Permit Number PHY 48295, issued to Rite Aid
5 Inc. dba Rite Aid #5860;

6 2. Prohibiting Rite Aid Inc. dba Rite Aid #5860 from serving as a manager,
7 administrator, owner, member, officer, director, associate, or partner of a licensee if, while acting
8 as the manager, administrator, owner, member, officer, director, associate, partner, or any other
9 person with management or control, it had knowledge of or knowingly participated in any
10 conduct for which Pharmacy Permit Number PHY 48295 is revoked or placed on probation, in
11 which case the prohibition shall last for a period not to exceed five years if Pharmacy Permit
12 Number PHY 48295 is placed on probation, or, if Pharmacy Permit Number PHY 48295 is
13 revoked, the prohibition shall continue until reinstatement;

14 3. Ordering Rite Aid Inc. dba Rite Aid #5860 to pay the Board of Pharmacy the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and,

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

18
19
20 DATED: 12/1/2022

21 **Sodergren,** Digitally signed by
22 **Anne@DCA** Sodergren, Anne@DCA
Date: 2022.12.01
09:28:42 -08'00'
23 ANNE SODERGREN
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

SA2022305092
95482968.docx