

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

In the Matter of the Accusation Against:

Case No. 7421

**RITE AID CORPORATION DBA RITE AID #6091**  
2700 Oro Dam Blvd East  
Oroville, CA 95966-5117

**STIPULATION FOR  
CONTINUING JURISDICTION**

Original Pharmacy Permit No. PHY 44063  
Respondent.

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 Corporation DBA Rite Aid #6091, 2700 Oro Dam Blvd East, Oroville, California 95966-5117, (hereinafter "applicant") submitted an application to the Board for a change of ownership of Rite Aid Corporation DBA Rite Aid #6091, 2700 Oro Dam Blvd East, Oroville, California 95966-5117, (Original Permit No. PHY 44063). The granting of the application would require the cancellation of Original Permit No. PHY 44063 issued to Rite Aid Corporation DBA Rite Aid #6091, 2700 Oro Dam Blvd East, Oroville, California 95966-5117, 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 44063) is currently the subject of a disciplinary order issued effective March 22, 2024, by the Board in the disciplinary matter entitled *In the Matter of the Accusation Against RITE AID CORPORATION DBA RITE AID #6091*, Board of Pharmacy Case No. 7421. 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. 7421, 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

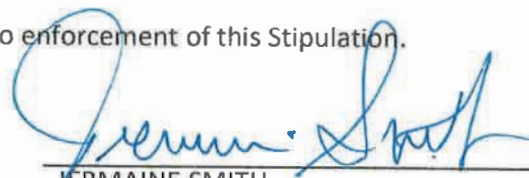
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13  
14 Dated: \_\_\_\_\_

\_\_\_\_\_  
ANNE SODERGREN  
Executive Officer  
California Board of Pharmacy

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. 7421, 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: 8/29/2024

  
JERMAINE SMITH  
Vice President

12  
13  
14 Dated: 08/29/2024

Sodergren,  
Anne@DCA

Digitally signed by Sodergren,  
Anne@DCA  
Date: 2024.08.29 12:09:28  
-07'00'

ANNE SODERGREN  
Executive Officer  
California Board of Pharmacy

**Exhibit A**

**Final Decision and Order  
Board of Pharmacy Disciplinary Case No. 7421**

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

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

**RITE AID CORPORATION dba RITE AID #6091, Respondent**

**Pharmacy Permit No. PHY 44063**

**Agency Case No. 7421**

**OAH No. 2023080168**

**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 March 22, 2024.

It is so ORDERED on February 21, 2024.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh", is written over a light gray rectangular background.

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  
4 State Bar No. 322028  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-6277  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

12  
13 In the Matter of the Accusation Against:

14 **RITE AID CORPORATION**  
15 **DBA RITE AID #6091**  
2700 Oro Dam Blvd. East  
Oroville, CA 95966-5117

16 **Pharmacy Permit No. PHY 44063**

17 Respondent.  
18

Case No. 7421

OAH No. 2023080168

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**(RITE AID #6091 ONLY)**

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21  
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy  
26 (Board). She brought this action solely in her official capacity and is represented in this matter by  
27 Rob Bonta, Attorney General of the State of California, by Katelyn E. Docherty, Deputy Attorney  
28 General.

2. Respondent Rite Aid Corporation dba Rite Aid #6091, (Respondent Rite Aid #6091) is represented in this proceeding by Barnes & Thornburg LLP by attorney Eric J. Beste, whose address is: 655 West Broadway, Suite 1300, San Diego, CA 92101.

3. On or about January 11, 1999, the Board of Pharmacy issued Pharmacy Permit Number PHY 44063 to Respondent Rite Aid #6091. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on April 1, 2024, unless renewed.

### **JURISDICTION**

4. Third Amended Accusation No. 7421 was filed before the Board, and is currently pending against Respondent Rite Aid #6091. The Third Amended Accusation and all other statutorily required documents were properly served on Respondent Rite Aid #6091 on January 3, 2024. Respondent Rite Aid #6091 timely filed its Notice of Defense contesting the Third Amended Accusation.

5. A copy of Third Amended Accusation No. 7421 is attached as exhibit A and incorporated herein by reference.

### **ADVISEMENT AND WAIVERS**

6. Respondent Rite Aid # 6091 has carefully read, fully discussed with counsel, and understands the charges and allegations in Third Amended Accusation No. 7421. Respondent Rite Aid #6091 has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent Rite Aid # 6091 is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Third Amended 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.

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1           8.     Respondent Rite Aid # 6091 voluntarily, knowingly, and intelligently waives and  
2 gives up each and every right set forth above.

3                                   **CULPABILITY**

4           9. Respondent Rite Aid # 6091 agrees that the charges and allegations in Third Amended  
5 Accusation No. 7421, if proven at hearing, constitutes cause for imposing discipline on its  
6 Pharmacy Permit.

7           10. For purposes of resolving the Accusation without the expense and uncertainty of further  
8 proceedings, Respondent Rite Aid #6091 agrees, at a hearing, Complainant could establish a  
9 factual basis for the charges and allegations in the Accusation, and that Respondent Rite Aid #  
10 6091 hereby gives up its right to contest those charges.

11           11. Respondent Rite Aid # 6091 agrees that its Pharmacy Permit is subject to discipline and  
12 it agrees to be bound by the Disciplinary Order below.

13                                   **RESERVATION**

14           12.    The admissions made by Respondent Rite Aid #6091 herein are only for the purposes  
15 of this proceeding, or any other proceedings in which the Board of Pharmacy or other  
16 professional licensing agency is involved, and shall not be admissible in any other criminal or  
17 civil proceeding.

18                                   **CONTINGENCY**

19           13.    This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
20 Rite Aid # 6091 understands and agrees that counsel for Complainant and the staff of the Board  
21 of Pharmacy may communicate directly with the Board regarding this stipulation and settlement,  
22 without notice to or participation by Respondent Rite Aid # 6091 or its counsel. By signing the  
23 stipulation, Respondent Rite Aid # 6091 understands and agrees that they may not withdraw its  
24 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.  
25 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and  
26 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible  
27 in any legal action between the parties, and the Board shall not be disqualified from further action  
28 by having considered this matter.



14. 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.

15. 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.

16. 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

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 44063 issued to Respondent Rite Aid Corporation dba Rite Aid #6091, is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years on the following terms and conditions:

1. Definition: Respondent

For the purposes of these terms and conditions, “respondent” shall refer to Rite Aid Corporation dba Rite Aid #6091 that was issued Pharmacy Permit Number PHY 44063. 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.

## 2. 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 pharmacy 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.

### 3. 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.

### 4. 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.

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1           5.     Cooperate with Board Staff

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

8           6.     Reimbursement of Board Costs

9           As a condition precedent to successful completion of probation, respondent shall pay to the  
10 board its costs of investigation and prosecution in the amount of \$12,522.00. Failure to pay costs  
11 by the deadline(s) as directed shall be considered a violation of probation.

12          Respondent shall be permitted to pay these costs in a payment plan approved by the board  
13 or its designee, so long as full payment is completed no later than one (1) year prior to the end  
14 date of probation.

15          7.     Probation Monitoring Costs

16          Respondent shall pay any costs associated with probation monitoring as determined by the  
17 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
18 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
19 be considered a violation of probation.

20          8.     Status of License

21          Respondent shall, at all times while on probation, maintain current pharmacy license with  
22 the board. Failure to maintain current licensure shall be considered a violation of probation.

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

27          9.     License Surrender While on Probation/Suspension

28          Following the effective date of this decision, should respondent wish to discontinue

1 business, respondent may tender the premises license to the board for surrender. The board or its  
2 designee shall have the discretion whether to grant the request for surrender or take any other  
3 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
4 license, respondent will no longer be subject to the terms and conditions of probation.

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

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

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

16 Respondent shall also, by the effective date of this decision, arrange for the continuation of  
17 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing  
18 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more  
19 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary  
20 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to  
21 the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the  
22 board. For the purposes of this provision, "ongoing patients" means those patients for whom the  
23 pharmacy has on file a prescription with one or more refills outstanding, or for whom the  
24 pharmacy has filled a prescription within the preceding sixty (60) days.

#### 25 10. Sale or Discontinuance of Business

26 During the period of probation, should respondent sell, trade or transfer all or part of the  
27 ownership of the licensed entity, discontinue doing business under the license issued to  
28 respondent, or should practice at that location be assumed by another full or partial owner,

1 person, firm, business, or entity, under the same or a different premises license number, the board  
2 or its designee shall have the sole discretion to determine whether to exercise continuing  
3 jurisdiction over the licensed location, under the current or new premises license number, and/or  
4 carry the remaining period of probation forward to be applicable to the current or new premises  
5 license number of the new owner.

6 11. Notice to Employees

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

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

20 12. Owners and Officers: Knowledge of the Law

21 Respondent shall provide, within thirty (30) days after the effective date of this decision,  
22 signed and dated statements from its Chief Executive Officer, Chief Operation Officer, Chief  
23 Financial Officer, and District Manager (or comparable officers who are authorized to bind  
24 performing the duties of these positions, regardless of title) stating under penalty of perjury that  
25 said individuals have read and are familiar with state and federal laws and regulations governing  
26 the practice of pharmacy. The failure to timely provide said statements under penalty of perjury  
27 shall be considered a violation of probation.

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1           13. Premises Open for Business

2           Respondent shall remain open and engaged in its ordinary business as a pharmacy in  
3 California for a minimum of 120 hours per calendar month. Any month during which this  
4 minimum is not met shall toll the period of probation, i.e., the period of probation shall be  
5 extended by one month for each month during with this minimum is not met. During any such  
6 period of tolling of probation, respondent must nonetheless comply with all terms and conditions  
7 of probation, unless respondent is informed otherwise in writing by the board or its designee. If  
8 respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 120  
9 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
10 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
11 shall include at minimum all of the following: the date(s) and hours respondent was open; the  
12 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on  
13 which respondent will resume business as required. Respondent shall further notify the board in  
14 writing with ten (10) days following the next calendar month during which respondent is open  
15 and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours.  
16 Any failure to timely provide such notification(s) shall be considered a violation of probation.

17           14. Posted Notice of Probation

18           Respondent shall prominently post a probation notice provided by the board or its designee  
19 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from  
20 the board or its designee. Failure to timely post such notice, or to maintain the posting during the  
21 entire period of probation, shall be considered a violation of probation.

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

26           15. Violation of Probation

27           If a respondent has not complied with any term or condition of probation, the board shall  
28 have continuing jurisdiction over respondent, and probation shall be automatically extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed  
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
3 to impose the penalty that was stayed.

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

9 16. Completion of Probation

10 Upon written notice by the board or its designee indicating successful completion of  
11 probation, respondent's license will be fully restored.

12 17. Administrative Fine

13 Respondent is to pay the Board an administrative fine in the amount of \$10,000.  
14 Respondent shall be permitted to pay this administrative fine in a payment plan approved by the  
15 board or its designee, so long as full payment is completed no later than one (1) year prior to the  
16 end date of probation.

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

RITE AID CORPORATION DBA RITE AID #6091,  
by JERMAINE SMITH, Vice President, Government  
and Regulatory Affairs  
*Respondent*

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

\_\_\_\_\_  
BARNES & THORNBURG, LLP  
By: ERIC J. BESTE  
*Attorney for Respondent*

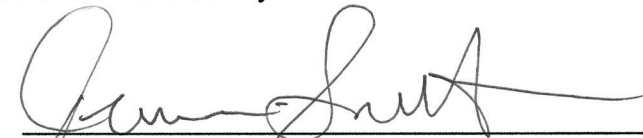


**ACCEPTANCE**

I, Jermaine Smith, Vice President, Government and Regulatory Affairs for Rite Aid, I am authorized to sign this Stipulated Settlement and Disciplinary Order on behalf of Rite Aid Corporation dba Rite Aid #6091. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with our counsel, Barnes & Thornburg LLP, by and through its attorney, Eric J. Beste. I understand the stipulation and the effect it will have on the Pharmacy Permit of Rite Aid Corporation dba Rite Aid #6091. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

1/5/2024

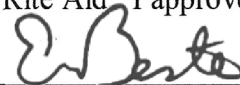


RITE AID CORPORATION DBA RITE AID #6091,  
by JERMAINE SMITH, Vice President, Government  
and Regulatory Affairs  
*Respondent*

I have read and fully discussed the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order with Jermaine Smith, Vice President, Government and Regulatory Affairs for Rite Aid. I approve its form and content.

DATED:

5 January 2024



BARNES & THORNBURG, LLP  
By: ERIC J. BESTE  
*Attorney for Respondent*

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**ENDORSEMENT**

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

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

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
KAREN R. DENVIR  
Supervising Deputy Attorney General

KATELYN E. DOCHERTY  
Deputy Attorney General  
*Attorneys for Complainant*

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**ENDORSEMENT**

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

DATED: 1/5/2023

Respectfully submitted,

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

  
KATELYN E. DOCHERTY  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Third Amended Accusation No. 7421**

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  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-6277  
Fax: (916) 327-8643  
7 E-mail: Katelyn.Docherty@doj.ca.gov  
*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7421

13 **RITE AID CORPORATION**

14 **DBA RITE AID #6091**

2700 Oro Dam Blvd., E  
15 Oroville, CA 95966-5117

16 **Pharmacy Permit No. PHY 44063**

17 Complainant.  
18

**THIRD AMENDED ACCUSATION**

19  
20  
21 **PARTIES**

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

25 2. On or about January 11, 1999, the Board of Pharmacy issued Pharmacy Permit  
26 Number PHY 44063 to Rite Aid Corporation dba Rite Aid #6091 (Respondent). The Pharmacy  
27 Permit was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on April 1, 2024, unless renewed.

## **JURISDICTION**

3. This Third Amended 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. Code section 4011 provides that the Board shall administer and enforce the Pharmacy Law [Code section 4000 et seq.].

5. Code section 4032 defines "license" to include any license, permit, registration, certificate or exemption issued by the Board.

6. Code section 4300 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.

7. Code section 4300.1 states:

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

## **STATUTORY PROVISIONS**

8. Code section 4081 states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every ... pharmacy ... who maintains a stock of dangerous drugs or dangerous devices.

9. Code section 4113 states, in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of the identity and license number of that pharmacist and the date he or she was designated.

...

(d) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

...

(e) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30 days a permanent replacement pharmacist-in-charge to propose to the board on the notification form, the pharmacy may instead provide on that form the name of any pharmacist who is an employee, officer, or administrator of the pharmacy or the entity that owns the pharmacy and who is actively involved in the management of the pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity that owns the pharmacy, shall be prepared during normal business hours to provide a representative of the board with the name of the interim pharmacist-in-charge with documentation of the active involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

10. Code section 4301 states, in pertinent part:

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

...

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

(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.

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

6 11. Code section 4305 states, in pertinent part:

7 ...  
8 (b) Any person who has obtained a license to conduct a Pharmacy, who willfully fails  
9 to notify the board of the termination of employment of any Pharmacist who takes  
10 charge of, or acts as manager of the Pharmacy, and who continues to permit the  
11 compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in  
12 his or her Pharmacy, except by a Pharmacist, shall be subject to summary suspension  
13 or revocation of his or her license to conduct a Pharmacy.

14 12. Code section 4307 states, in pertinent part:

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

27 (1) Where a probationary license is issued or where an existing license is  
28 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.

...

## 21 REGULATIONS

22 13. Title 16, California Code of Regulations ("CCR"), section 1714 states, in pertinent  
23 part:

24 ....

25  
26 "(b) Each pharmacy licensed by the board shall maintain its facilities,  
27 space, fixtures, and equipment so that drugs are safely and properly prepared, maintained,  
28 secured and distributed. The pharmacy shall be sufficient size and unobstructed area to  
accommodate the safe practice of pharmacy."



14. CCR section 1718 states:

“Current inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon requires for at least 3 years after the date of the inventory.

15. Title 21, United States Code, Section 802 states in pertinent part:

(6) The term “controlled substance” means a drug or other substance, or immediate precursor included in schedule I, II, III, IV, or V.

### **COST RECOVERY**

16. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

### **DRUG CLASSIFICATIONS**

17. Drug Classifications:

<b>Brand Name</b>	<b>Generic Name</b>	<b>Dangerous Drug Per Business &amp; Professions Code § 4022</b>	<b>Controlled Substance Per Health &amp; Safety Code</b>	<b>Indications for Use</b>
Xanax	Alprazolam	Yes	Yes – Schedule IV per H&S §11057(d)(1)	Anxiety

1	Belbuca	Buprenorphine	Yes	Yes, schedule III per H&SC 11056	Pain
2	Suboxone	Buprenorphine/naloxone	Yes	Yes, schedule III per H&SC 11056	Narcotic dependence
3	Klonopin	Clonazepam	Yes	Yes – Schedule IV per H&S §11057	Anxiety
4	Lomotil	Diphenoxylate/atropine	Yes	Yes – Schedule IV per H&S §11057	Diarrhea
5	Lunesta	Eszopiclone	Yes	Yes – Schedule IV per H&S §11057	Insomnia
6	Norco	Hydrocodone/acetaminophen	Yes	Yes – Schedule II per H&S §11055	Pain
7	Dialudid	Hydromorphone	Yes	Yes – Schedule II per H&S §11055	Pain
8	Ativan	Lorazepam	Yes	Yes – Schedule IV per H&S §11057	Anxiety
9	Miltown	Meprobamate	Yes	Yes – Schedule IV per H&S §11057	Anxiety
10	MS Contin	Morphine sulfate	Yes	Yes – Schedule II per H&S §11055	Pain

Luminal	Phenobarbital	Yes	Yes, schedule IV per H&SC 11057	Sedation or seizures
Adipex-P	Phentermine	Yes	Yes, schedule IV per H&SC 11057	Weight Loss
Lyrica	Pregabalin	Yes	Yes, schedule V per HS&SC 11058	Seizures
Restoril	Temazepam	Yes	Yes – Schedule IV per H&S §11057	Anxiety/sleep
Ultram	Tramadol	Yes	Yes – Schedule IV per H&S §11057	Pain
Ambien	Zolpidem	Yes	Yes – Schedule IV per H&S §11057	Insomnia

### **BACKGROUND INFORMATION**

18. On or around February 20, 2022, March 2, 2022, and May 3, 2022, the Board received DEA-106 Reports of Theft or Loss of Controlled Substances from Respondent, reporting loss of controlled substances due to unknown reasons.

19. On or around December 7, 2022, Board Inspector S.M. went to Respondent Pharmacy to perform an investigation of the drug losses and inspection.

20. Board Inspector S.M. performed an audit of Respondent's controlled substance records of inventory from September 12, 2021, through December 7, 2022. The audit showed the following discrepancies, for which Respondent could not account for:

Drug Name and Strength	Initial Amount (I) Date: 9/12/2021	Amount Ordered WLS (A) Date: 9/12/2021 to 12/7/2022	Total Amount (I+A) = T	Amount Dispensed + Returned to RD = (D) Date: 9/12/2021 to 12/7/2022	Amount Returned to RD = (D) Date: 9/12/2021 to 12/7/2022	Amount to be Accounted for (T-D)	Stock on Hand (S) Date: 12/7/2022	Amount Short (-) or Amount Overage (+): (S) – (T-D)
Zolpidem 10mg tablet	991	13,700	14,691	14,583	0	108	713	605
Phenobarbital 60mg tablet	359	2,600	2,959	2,690	0	269	258	-11
Meprobamate 400mg tablet	24	1,300	1,324	1,040	0	284	230	-54
Temazepam 30mg capsule	238	1,500	1,738	1,590	0	148	145	-3
Lorazepam 1mg tablet	1,670	23,500	25,170	24,263	1	906	969	63
Lorazepam 2mg tablet	345	7,200	7,545	7,194	0	351	446	95
Hydromorphone 2mg tablet	194	2,500	2,694	2,448	0	246	245	-1
Morphine sulf ER 30mg tablet	211	5,600	5,811	5,302	24	485	425	-60
Clonazepam 1mg tablet	1,556	17,200	18,756	18,017	0	739	650	-89
Buprenorphine/naloxone 2-0.5mg SL tablet	130	2,040	2,170	2,006	6	158	154	-4
Pregabalin 75mg capsule	678	11,070	11,748	11,362	0	386	455	69
Pregabalin 150mg capsule	660	6,120	6,780	6,240	0	540	503	-37

1	Eszopiclone 3mg tablet	267	3,200	3,467	3,181	0	286	225	-61
2	Belbuca 150 mcg film	166	1,860	2,026	1,856	0	170	169	-1
3									
4	Belbuca 750 mcg film	60	2,160	2,220	1,980	0	240	180	-60
5									
6	Briviact 25mg tablet	60	0	60	0	60	0	0	0
7	Buprenorph ine 8mg SL tablet	122	4,290	4,412	4,218	0	194	277	83
8									
9	Diphenoxyl ate/ atropine 2.5-.025mg tablet	596	6,900	7,496	7,044	0	452	405	-47
10									
11	Hydrocodo ne/ acetaminop hen 10-325 mg tablet	3,050	294,90 0	297,9 50	298,22 9	43	-322	67	389
12									
13									
14	Tramadol 50mg tablet	3,823	106,60 0	110,4 23	107,12 7	2	3,294	2,962	-332
15	Phenobarbit al 15mg tablet	980	400	1,380	450	800	130	126	-4
16									
17	Alprazolam 0.5mg tablet	744	11,600	12,34 4	11,807	9	528	647	119
18									
19	Phentermin e 37.5mg tablet	25	1,900	1,925	1,770	0	155	144	-11
20									
21	Phenobarbit al 32.4 mg tablet	393	1,900	2,293	1,730	43	520	399	-121
22									

21. Drug shortages may be due to theft, diversion, selling drugs without a prescription and/or failure to maintain accurate inventory records. Overages can be due to billing insurance companies for drugs not dispensed to patients, obtaining drugs from unreported sources, and/or the failure to maintain accurate inventory records.

22. On September 19, 2022, the Board received an *Application for Change of Pharmacist-in-Charge* (Application) from Respondent, signed under penalty of perjury. The

1 Application stated that on September 9, 2022, the prior Pharmacist-in-Charge (PIC), pharmacist  
2 T.A.(RPH 74046), had ceased to act as the PIC and that pharmacist B.P. (RPH 79742) was  
3 designated as the new PIC the following day. However, T.A.'s interim period as PIC, which  
4 began on February 11, 2022, had previously expired on June 11, 2022. Accordingly, Respondent  
5 operated without a permanent PIC from February 11, 2022 through September 9, 2022, a total of  
6 210 days. In addition, on or about August 9, 2022, the Board received an *Application for Change*  
7 *of Pharmacist-in-Charge* from pharmacist T.A., signed under penalty of perjury, stating he had  
8 disassociated as PIC at Respondent's pharmacy, on August 2, 2023. Accordingly, Respondent  
9 operated without a PIC from August 3, 2022, until B.P. took over on September 10, 2022, a total  
10 of 37 days.

11 23. On December 16, 2022, the Board received an email from B.P. notifying the Board  
12 that he had dissociated as pharmacist-in-charge for Respondent Pharmacy. On or around  
13 December 28, 2022, the Board requested that Respondent submit another Application. On or  
14 about March 8, 2023, Respondent submitted another Application to the Board, which was signed  
15 under penalty and perjury, stating that B.P. had dissociated on December 16, 2022, and that T.A.  
16 took over as interim PIC on March 2, 2023. Accordingly, Respondent operated without a  
17 permanent PIC from December 17, 2022 through March 1, 2023, a total of 74 days.

### 18 19 **FIRST CAUSE FOR DISCIPLINE**

#### 20 **(Failure to Timely Propose Permanent Pharmacist-In-Charge)**

21 24. Respondent is subject to disciplinary action pursuant to Code section 4301,  
22 subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated Code  
23 section 4113, subdivision (e), when it kept an interim Pharmacist-in-Charge in place for longer  
24 than 120 days. Specifically, pharmacist T.A. (RPH 79742) became the interim PIC on February  
25 11, 2022, and the interim period expired on June 11, 2022, by which time Respondent was  
26 required to propose to the Board the name of a pharmacist to serve as the permanent Pharmacist-  
27 in-Charge. Respondent did not propose a new PIC to the Board until September 9, 2022,  
28 meaning that it operated without a permanent PIC from February 11, 2022 through September 9,

2022, a period of 210 days. The facts and circumstances are more fully set forth above in paragraph 22.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Failure to Timely Notify Board of Change of Status of Pharmacist-In-Charge)**

25. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated Code section 4113, subdivision (d), in that Respondent failed to notify the Board in writing within 30 days of the following:

a. T.A. disassociated as Respondent's interim PIC as of August 2, 2022, however, Respondent failed to notify the Board of this change until September 19, 2022, 48 days later. The facts and circumstances are more fully set forth above in paragraph 22.

b. B.P. had disassociated as Respondent's PIC as of December 16, 2022, however, Respondent failed to notify the Board of this change until March 8, 2023, 82 days later. The facts and circumstances are more fully set forth above in paragraph 23.

## **THIRD CAUSE FOR DISCIPLINE**

### **(Misrepresentation of Facts)**

26. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (g), on the grounds of unprofessional conduct, in that Respondent knowingly made or signed a certificate or document that falsely represented the existence or nonexistence of a state of facts when on or about August 8, 2022, Respondent submitted an *Application for Change of Pharmacist-In-Charge* to the Board. Specifically, the application, which had been signed under penalty of perjury, falsely represented that T.A. had dissociated as pharmacist-in-charge on September 9 2022. In fact, T.A. had dissociated as pharmacist-in-charge on August 2, 2022. The facts and circumstances are more fully set forth above in paragraph 22.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Pharmacy Operation without a Pharmacist-in-Charge)**

3 27. Respondent is subject to disciplinary action pursuant to Code section 4301,  
4 subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated Code  
5 section 4305, subdivision (b), when Respondent operated a pharmacy for more than 30 days  
6 without the supervision or management of a PIC. Specifically, Respondent operated without a  
7 PIC from August 2, 2022, through September 9, 2022, and December 17, 2022 through March 1,  
8 2023 as set forth above in paragraph 22-23.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Improper Operational Standards and Security)**

11 28. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
12 in conjunction with California Code of Regulations title 16, section 1714, subdivision (b), in that  
13 Respondent failed to maintain its facilities, space, fixtures, and equipment so that drugs in its  
14 stock were safely maintained and secured. Specifically, an inspection and investigation,  
15 subsequent to a report of employee diversion, found that on or about and between September 12,  
16 2021 to December 7, 2022, Respondent failed to secure and maintain pharmacy facilities from  
17 diversion, theft, or other lapses which resulted in the drug losses set forth in paragraphs 18-21.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Records)**

20 29. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)  
21 and (o), in conjunction with Code sections 4081, subdivision (a), and 4105, in that it failed to  
22 maintain an accurate inventory of dangerous drugs and controlled substances. Specifically,  
23 during the above-mentioned inspection and investigation, an audit of the above-mentioned  
24 dangerous drugs/controlled substances revealed a lesser amount in stock than was accounted for  
25 by records required by law, as set forth in paragraphs 18-21.

26 ///

27 ///

28 ///



## **DISCIPLINARY CONSIDERATIONS**

30. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges the following:

31. On or about December 4, 2018, in a prior action, the Board issued Citation Number CI 2016 72175 to Respondent for violation of Code section 4342, subdivision (a) (failure to prevent sale of drugs lacking quality, distributing misbranded drugs or devices), and Health and Safety Code section 111330, (failure to notify patient of the substitution of a drug product with the same active ingredients). The Board issued a \$1,000 fine as a result of these violations. This citation has become final and Respondent has complied with the fine.

32. On or about September 30, 2022, in a prior action, the Board issued Citation Number CI 2021 93799 to Respondent for violation of Code section 4081, subdivision (a) (records of dangerous drugs and devices kept open for inspection), Code section 4301, subdivision (c) (engaging in gross negligence), California Code of Regulations (CCR), Title 16, section 1714, subdivisions (b) and (c) (operational standards and security, pharmacy and pharmacist responsible for pharmacy security). The Board issued a \$3,500 fine as a result of these violations. This citation has become final and Respondent has complied with the fine.

33. On or about April 8, 2022, in a prior action, the Board issued Citation Number CI 2021 94955 to Respondent for violation of Code section 4305, subdivision (b) (operation of a pharmacy for more than 30 days without supervision or management by a PIC), and Code section 4113, subdivision (a) (failure to designate a PIC within 30 days in writing). The Board issued a \$4,000 fine as a result of these violations. This citation has become final and Respondent has complied with the fine.

33. On or about November 30, 2022, in a prior action, the Board issued Citation Number CI 2022 93799 to Respondent for violation of Code section 4081, subdivision (a) in conjunction with California Code of Regulations title 16, section 1718 (records of dangerous drugs and devices kept open for inspection; maintenance of records), California Code of Regulations title 16, section 1714, subdivisions (b) and (d) (failure to properly secure the pharmacy) and Code section 4301, subdivision (c) (engaging in unprofessional conduct and gross negligence). The

Board issued a \$3,500 fine as a result of these violations. This citation has become final and Respondent has complied with the fine.

### **OTHER MATTERS**

34. Pursuant to Code section 4307, subdivision (a), if discipline is imposed on Pharmacy Permit Number PHY 44063, issued to Rite Aid Corporation, dba Rite Aid #6091, it shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 44063, issued to Rite Aid Corporation, dba Rite Aid #6091 is placed on probation or until Pharmacy Permit Number PHY 44063, issued to Rite Aid Corporation, dba Rite Aid #6091 is reinstated, if it is revoked.

### **PRAYER**

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

1. Revoking or suspending Pharmacy Permit Number PHY 44063, issued to Rite Aid Corporation dba Rite Aid #6091;

2. Ordering Rite Aid Corporation dba Rite Aid #6091 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3,

3. Prohibiting Rite Aid Corporation dba Rite Aid #6091 from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 44063 is placed on probation or until Pharmacy Permit Number PHY 44063 is reinstated if Pharmacy Permit Number PHY 44063 issued to Rite Aid Corporation dba Rite Aid #6091, is revoked; and

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

DATED: 1/3/2024

Sodergren,  
Anne@DCA

Digitally signed by Sodergren,  
Anne@DCA  
Date: 2024.01.03 08:30:54 -08'00'

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

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