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

In the Matter of the Accusation Against:

Case No. 7481

**PHARM90 LLC
dba RITE CARE PHARMACY
1800 Monument Blvd., Ste L
Concord, CA 94520**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy License No. PHY 56020

ONLY AS TO RESPONDENTS

**PHARM90 LLC
dba RITE CARE PHARMACY
1800 Monument Blvd., Ste L
Concord, CA 94520**

**PHARM 90 LLC
dba RITE CARE PHARMACY
Pharmacy License No. PHY 56020**

Pharmacy License No. PHY 58063

**PHARM 90 LLC
dba RITE CARE PHARMACY
Pharmacy License No. PHY 58063**

**DAVID JOSEPH RICCI
2213 Snowy Egret St.
Modesto, CA 95355**

Pharmacist License No. RPH 41707

Respondents.

FINDINGS OF FACT

1. On or about August 4, 2023, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed

1 Accusation No. 7481 against Pharm90 LLC, dba Rite Care Pharmacy, and David Joseph Ricci.
2 (Accusation attached as Exhibit A.) .

3 2. On or about March 25, 2019, the Board issued Pharmacy License PHY 56020 to
4 Pharm90 LLC, dba Rite Care Pharmacy (Respondent Pharm90-1). The Pharmacy License
5 expired on September 28, 2021, pursuant to a change of ownership. Per Business and Professions
6 Code sections 118, subdivision (b) and 4300.1, this lapse in licensure does not deprive the Board
7 of its authority to institute or continue this disciplinary proceeding.

8 3. On or about September 28, 2021, the Board issued Pharmacy License Number PHY
9 58063 to Pharm90 LLC, dba Rite Care Pharmacy (Respondent Pharm90-2). The Pharmacy
10 License expired on November 19, 2021, and has not been renewed. Per Business and Professions
11 Code sections 118, subdivision (b) and 4300.1, this lapse in licensure does not deprive the Board
12 of its authority to institute or continue this disciplinary proceeding.

13 4. On or about August 10, 2023, Respondents Pharm90-1 and Pharm90-2 were served
14 by Certified and First Class Mail copies of Accusation No. 7481, Statement to Respondent,
15 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
16 11507.5, 11507.6, and 11507.7) at Respondents' address of record which, pursuant to Business
17 and Professions Code section 4100, is required to be reported and maintained with the Board.
18 Respondents' address of record was and is 1800 Monument Blvd., Ste L, Concord, CA 94520.

19 5. Service of the Accusation was effective as a matter of law under the provisions of
20 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
21 124.

22 6. Government Code section 11506(c) states, in pertinent part:

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

28 7. The Board takes official notice of its records and the fact that Respondents Pharm90-
1 and Pharm90-2 failed to file a Notice of Defense within 15 days after service upon them of the
Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 7481

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

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

5 9. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondents Pharm90-1 and Pharm90-2 are in default. The Board will take action without
7 further hearing and, based on the relevant evidence contained in the Default Decision
8 Investigatory Evidence Packet in this matter, finds that the charges and allegations in Accusation
9 No. 7481, are separately and severally, found to be true and correct by clear and convincing
10 evidence.

11 10. The Board finds that the actual costs for Investigation and Enforcement regarding
12 Pharm90-1 and Pharm90-2 are \$5,430.50 as of October 2, 2023.

13 11. This Decision and Order applies only to Respondents Pharm90-1 and Pharm90-2. It
14 does not apply to or resolve the case pending against David Joseph Ricci.

15 **DETERMINATION OF ISSUES**

16 1. Based on the foregoing findings of fact, Respondent Pharm90 LLC, dba Rite Care
17 Pharmacy (Respondent Pharm90-1), has subjected its Pharmacy License No. PHY 56020 to
18 discipline.

19 2. Based on the foregoing findings of fact, Respondent Pharm90 LLC, dba Rite Care
20 Pharmacy (Respondent Pharm90-2), has subjected its Pharmacy License No. PHY 58063 to
21 discipline.

22 3. The agency has jurisdiction to adjudicate this case by default.

23 4. The Board of Pharmacy is authorized to revoke Respondent Pharm90-1's Pharmacy
24 License No. 56020 based upon the following violations alleged in the Accusation, which are
25 supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this
26 case: In violation of Business and Professions Code sections 4113, subdivision (c) and 4301,
27 subdivision (o), Respondent Pharm90-1 failed to notify the Board of the disassociation of its
28 former pharmacist-in-charge (PIC), and failed to designate a new PIC for the Board's approval.

1 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
2 or partner of a licensee unless and until Pharmacy License Number PHY 58063 is reinstated.

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

7 This Decision shall become effective at 5:00 p.m. on December 20, 2023.

8 It is so ORDERED on November 20, 2023.

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

12 

13 By _____

14
15 Seung W. Oh, Pharm. D.
16 Board President

17 43897150.DOCX
18 DOJ Matter ID:SF2023400430

19 Attachment:
20 Exhibit A: Accusation

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3550
6 Facsimile: (415) 703-5480
E-mail: Amber.Wipfler@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7481

13 **PHARM90 LLC**
14 **dba RITE CARE PHARMACY**
15 **1800 Monument Blvd., Ste L**
Concord, CA 94520

ACCUSATION

16 **Pharmacy License No. PHY 56020**

17 **PHARM90 LLC**
18 **dba RITE CARE PHARMACY**
19 **1800 Monument Blvd., Ste L**
Concord, CA 94520

20 **Pharmacy License No. PHY 58063**

21 **DAVID JOSEPH RICCI**
22 **2213 Snowy Egret St.**
Modesto, CA 95355

23 **Pharmacist License No. RPH 41707**

24 Respondents.

1 **PARTIES**

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

4 2. On or about March 25, 2019, the Board issued Pharmacy License PHY 56020 to
5 Pharm90 LLC, dba Rite Care Pharmacy (Respondent Pharm90-1). The Pharmacy License
6 expired on September 28, 2021, pursuant to a change of ownership.

7 3. On or about September 28, 2021, the Board issued Pharmacy License Number PHY
8 58063 to Pharm90 LLC, dba Rite Care Pharmacy (Respondent Pharm90-2). The Pharmacy
9 License expired on November 19, 2021, and has not been renewed.

10 4. On or about April 23, 1988, the Board issued Pharmacist License Number RPH
11 41707 to David Joseph Ricci (Respondent Ricci). The Pharmacist License was in full force and
12 effect at all times relevant to the charges brought herein and will expire on December 31, 2023,
13 unless renewed.

14 **JURISDICTION**

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

18 6. Code section 4011 provides that the Board shall administer and enforce both the
19 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
20 [Health & Safety Code, § 11000 et seq.].

21 7. Code section 4300, subdivision (a) provides that every license issued by the Board
22 may be suspended or revoked.

23 8. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
24 suspension of a Board-issued license, the placement of a license on a retired status, or the
25 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
26 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
27 licensee or to render a decision suspending or revoking the license.

28 ///

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

6 ...

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

9
10 12. Code section 4312 states:

11 (a) The board may cancel the license of a facility that is licensed by the board if
12 the licensed premises remain closed, as defined in subdivision (e), other than by order
13 of the board. For good cause shown, the board may cancel a license after a shorter
14 period of closure. To cancel a license pursuant to this subdivision, the board shall
15 make a diligent, good faith effort to give notice by personal service on the licensee. If
16 a written objection is not received within 10 days after personal service is made or a
17 diligent, good faith effort to give notice by personal service on the licensee has failed,
18 the board may cancel the license without the necessity of a hearing. If the licensee
19 files a written objection, the board shall file an accusation based on the licensee
20 remaining closed. Proceedings shall be conducted in accordance with Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
22 Government Code, and the board shall have all the powers granted in that chapter.

23 (b) If a facility license is canceled pursuant to subdivision (a) or revoked
24 pursuant to this article, or a facility notifies the board of its intent to remain closed or
25 to discontinue business, the licensee shall, within 10 days thereafter, arrange for the
26 transfer of all dangerous drugs and controlled substances or dangerous devices to
27 another licensee authorized to possess the dangerous drugs and controlled substances
28 or dangerous devices. The licensee transferring the dangerous drugs and controlled
substances or dangerous devices shall immediately confirm in writing to the board
that the transfer has taken place.

29 ...

30
31 13. Code section 4332 states:

32 Any person who fails, neglects, or refuses to maintain the records required by
33 Section 4081 or who, when called upon by an authorized officer or a member of the
34 board, fails, neglects, or refuses to produce or provide the records within a reasonable
35 time, or who willfully produces or furnishes records that are false, is guilty of a
36 misdemeanor.

37
38 14. Code section 4333 states:

39 (a) All prescriptions filled by a pharmacy and all other records required by
40 Section 4081 shall be maintained on the premises and available for inspection by
41 authorized officers of the law for a period of at least three years. In cases where the

1 pharmacy discontinues business, these records shall be maintained in a board-licensed
2 facility for at least three years.

3 (b) Any person who willfully fails to comply with subdivision (a) is guilty of a
4 misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding
5 two hundred dollars (\$200). Any person convicted of a second or subsequent offense
6 shall be punished by a fine of not less than two hundred dollars (\$200) and not more
7 than four hundred dollars (\$400).

8 . . .

9 15. California Code of Regulations, title 16, subdivision 1708.2 states:

10 Any permit holder shall contact the board prior to transferring or selling any
11 dangerous drugs, devices or hypodermics inventory as a result of termination of
12 business or bankruptcy proceedings and shall follow official instructions given by the
13 board applicable to the transaction.

14 COST RECOVERY

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

21 FACTUAL ALLEGATIONS

22 17. On or about July 9, 2021, the Board-approved pharmacist-in-charge (PIC) of
23 Respondent Pharm90-1 informed the Board that she was disassociating from Respondent
24 Pharm90-1. Respondent Pharm90-1 failed to notify the Board of this disassociation, and further
25 failed to designate a new PIC within 30 days of the disassociation. As a result, Respondents
26 Pharm90-1 and Pharm90-2 did not have a Board-approved PIC on record between July 9, 2021
27 and November 19, 2021.

28 18. On or about September 29, 2021, the Board received information from the health
insurance company Humana regarding fraud and other unlawful activity allegedly committed by
Respondent Pharm90-1. In response, the Board initiated an investigation.

19 19. On or about November 22, 2021, Respondent Pharm90-2 filed a Discontinuance of
20 Business form with the Board. The form indicated that the pharmacy was discontinuing business

1 on November 19, 2021, and would transfer its prescription inventory to Rx Reverse Distributors,
2 Inc. However, Respondent Pharm90-2 did not contact the Board to receive instructions on how to
3 transfer the inventory.

4 20. The Discontinuance of Business form filed by Respondent Pharm90-2 indicated
5 that Respondent Ricci was the PIC. On the form, Respondent Ricci signed a declaration stating
6 that he conducted an inventory of all dangerous drugs on November 19, 2021. The form further
7 indicated that all records of acquisitions and dispositions of dangerous drugs, including
8 prescription files, would be maintained at Pioneer Pharmacy RX Software. The form did not
9 provide an address for Pioneer Pharmacy RX Software.

10 21. On or about March 14, 2022, the Board inspector assigned to investigate
11 Respondents Pharm90-1 and Pharm90-2 telephoned Respondent Pharm90-2's human resources
12 director, seeking information about the pharmacy's closure and the location of its records. The
13 inspector left a message requesting a return call, but did not receive one.

14 22. On or about March 14, 2022, the Board inspector telephoned Elisangela
15 Engelman, who was listed on the Discontinuance of Business Form as the owner of Respondent
16 Pharm90-2. The inspector received an automated recording that the cellular customer was not
17 available, and was unable to leave a message.

18 23. On or about March 14, 2022, the Board inspector telephoned Respondent Ricci at
19 his phone number of record with the Board, and left him a message requesting a return call. That
20 same day, the inspector e-mailed Respondent Ricci, informing him that she was conducting an
21 investigation of Respondent Pharm90-2 and requesting a phone call to discuss his employment
22 there.

23 24. On or about March 22, 2022, the Board inspector received a voicemail message
24 from Respondent Ricci, indicating that he had received her e-mail. The inspector thereafter
25 telephoned Respondent Ricci on March 23, April 4, and April 18, 2022. Each time, the inspector
26 left Respondent Ricci a message requesting a return call; however, none was received.

27
28

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Contact Board Re: Transfer of Inventory – Respondent Pharm90-2)**

3 31. Respondent Pharm90-2 is subject to discipline under Code sections 4301,
4 subdivision (o), 4312, subdivision (b), and California Code of Regulations, title 16, subdivision
5 1708.2 in that, as described in paragraph 18 above, Respondent Pharm90-2 did not contact the
6 Board to receive instructions on how to transfer its inventory of dangerous drugs, devices, or
7 hypodermics.

8 **OTHER MATTERS**

9 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License
10 Number PHY 56020 issued to Respondent Pharm90-1, Respondent Pharm90-1 shall be
11 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
12 or partner of a licensee for five years if Pharmacy License Number PHY 56020 is placed on
13 probation or until Pharmacy License Number PHY 56020 is reinstated, if it is revoked.

14 33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License
15 Number PHY 58063 issued to Respondent Pharm90-2, Respondent Pharm90-2 shall be
16 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
17 or partner of a licensee for five years if Pharmacy License Number PHY 58063 is placed on
18 probation or until Pharmacy License Number PHY 58063 is reinstated, if it is revoked.

19 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License Number
20 PHY 58063 issued to Respondent Pharm90-2, and Respondent Ricci, while acting as a manager,
21 had knowledge of or knowingly participated in any conduct for which the licensee was
22 disciplined, Respondent Ricci shall be prohibited from serving as a manager, administrator,
23 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
24 License Number PHY 58063 is placed on probation or until Pharmacy License Number PHY
25 58063 is reinstated, if it is revoked.

26 35. Pursuant to Code section 4307, if discipline is imposed on Registered Pharmacist
27 License Number RPH 41707 issued to Respondent Ricci, Respondent Ricci shall be prohibited
28 from serving as a manager, administrator, owner, member, officer, director, associate, or partner

1 of a licensee for five years if Registered Pharmacist License Number RPH 41707 is placed on
2 probation or until Registered Pharmacist License Number RPH 41707 is reinstated, if it is
3 revoked.

4 **PRAYER**

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

7 1. Revoking or suspending Pharmacy License Number PHY 56020, issued to Pharm90,
8 LLC, dba Rite Care Pharmacy (Pharm90-1);

9 2. Revoking or suspending Pharmacy License Number PHY 58063, issued to Pharm90,
10 LLC, dba Rite Care Pharmacy (Pharm90-2);

11 3. Revoking or suspending Registered Pharmacist License Number RPH 41707, issued
12 to David Joseph Ricci;

13 4. Prohibiting Pharm90, LLC dba Rite Care Pharmacy (Pharm90-1) from serving as a
14 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
15 five years if Pharmacy License Number PHY 56020 is placed on probation or until Pharmacy
16 License Number PHY 56020 is reinstated, if it is revoked;

17 5. Prohibiting Pharm90, LLC dba Rite Care Pharmacy (Pharm90-2) from serving as a
18 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
19 five years if Pharmacy License Number PHY 58063 is placed on probation or until Pharmacy
20 License Number PHY 58063 is reinstated, if it is revoked;

21 6. Prohibiting David Joseph Ricci from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Pharmacy License
23 Number PHY 58063 is placed on probation or until Pharmacy License Number PHY 58063 is
24 reinstated, if it is revoked;

25 7. Prohibiting David Joseph Ricci from serving as a manager, administrator, owner,
26 member, officer, director, associate, or partner of a licensee for five years if Registered
27 Pharmacist License Number RPH 41707 is placed on probation or until Registered Pharmacist
28 License Number RPH 41707 is reinstated, if it is revoked.

1 8. Ordering Pharm90-1, Pharm-90-2, and David Joseph Ricci to pay the Board of
2 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3; and,

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

5
6 DATED: 8/4/2023

Sodergren,
Anne@DCA



Digitally signed by Sodergren,
Anne@DCA
Date: 2023.08.04 13:19:26
-07'00'

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

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