

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

In the Matter of the Accusation Against:

**PHARM90 LLC dba RITE CARE PHARMACY,
Pharmacy Permit No. PHY 56020;**

**PHARM90 LLC dba RITE CARE PHARMACY,
Pharmacy Permit No. PHY 58063;**

and

**DAVID JOSEPH RICCI,
Pharmacist License No. RPH 41707,**

Respondents.

Agency Case No. 7481

OAH No. 2023100187

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 September 12, 2024.

It is so ORDERED on August 13, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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

16 **Pharmacy License No. PHY 56020**

17 **PHARM90 LLC**
18 **dba RITE CARE PHARMACY**
1800 Monument Blvd., Ste L
19 **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.
25

Case No. 7481

OAH No. 2023100187

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

ONLY AS TO RESPONDENT

DAVID JOSEPH RICCI
Pharmacist License No. RPH 41707

26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 **PARTIES**

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

6 2. David Joseph Ricci (Respondent Ricci) is represented in this proceeding by attorney
7 Carolyn Park of Unlock Legal, A Professional Law Corporation, 137 S. Prospect Avenue, Tustin,
8 CA 92780.

9 3. On or about April 23, 1988, the Board issued Pharmacist License Number RPH
10 41707 to Respondent Ricci. The Pharmacist License was in full force and effect at all times
11 relevant to the charges brought in Accusation No. 7481 and will expire on December 31, 2025,
12 unless renewed.

13 **JURISDICTION**

14 4. Accusation No. 7481 was filed before the Board, and is currently pending against
15 Respondent Ricci. The Accusation and all other statutorily required documents were properly
16 served on Respondent Ricci on August 10, 2023. Respondent Ricci timely filed his Notice of
17 Defense contesting the Accusation.

18 5. A copy of Accusation No. 7481 is attached as exhibit A and incorporated herein by
19 reference.

20 **ADVISEMENT AND WAIVERS**

21 6. Respondent has carefully read, fully discussed with counsel, and understands the
22 charges and allegations in Accusation No. 7481. Respondent has also carefully read, fully
23 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
24 Order.

25 7. Respondent is fully aware of his legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
27 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
28 to the issuance of subpoenas to compel the attendance of witnesses and the production of

documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 7481, if proven at a hearing, constitute cause for imposing discipline against his Pharmacist License.

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

11. Respondent agrees that his Pharmacist License is subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or

effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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 Pharmacist License Number RPH 41707, issued to Respondent David Joseph Ricci, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. 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

- the filing of a disciplinary pleading, issuance of a citation, or initiation of another 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, distributing, billing, or charging for any drug, device or controlled substance.

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

2. 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.

3. 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.

4. 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 Entity 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.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7481 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of Entity employer(s), and the name(s) and telephone number(s) of all of Entity direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) Entity direct supervisor, (b) Entity pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of Entity employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7481, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the

1 board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c)
2 during the term of probation, respondent shall cause the person(s) taking over the role(s) to report
3 to the board in writing within fifteen (15) days of the change acknowledging that he or she has
4 read the decision in case number 7481, and the terms and conditions imposed thereby.

5 If respondent works for or is employed by or through an employment service, respondent
6 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
7 of the decision in case number 7481, and the terms and conditions imposed thereby in advance of
8 respondent commencing work at such licensed entity. A record of this notification must be
9 provided to the board upon request.

10 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
11 (15) days of respondent undertaking any new employment by or through an employment service,
12 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service
13 to report to the board in writing acknowledging that he or she has read the decision in case
14 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to
15 ensure that these acknowledgment(s) are timely submitted to the board.

16 Failure to timely notify present or prospective employer(s) or failure to cause the identified
17 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
18 shall be considered a violation of probation.

19 "Employment" within the meaning of this provision includes any full-time, part-time,
20 temporary, relief, or employment/management service position as a pharmacist, or any position
21 for which a pharmacist is a requirement or criterion for employment, whether the respondent is an
22 employee, independent contractor or volunteer.

23 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

24 Respondent shall further notify the board in writing within ten (10) days of any change in
25 name, residence address, mailing address, e-mail address or phone number.

26 Failure to timely notify the board of any change in employer, name, address, or phone
27 number shall be considered a violation of probation.
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1 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

2 During the period of probation, respondent shall not supervise any intern pharmacist, be the
3 pharmacist-in-charge, designated representative-in-charge, responsible manager or other
4 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
5 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

6 **9. Reimbursement of Board Costs**

7 As a condition precedent to successful completion of probation, respondent shall pay to the
8 board its costs of investigation and prosecution in the amount of \$5,000.00.

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

12 **10. Probation Monitoring Costs**

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

17 **11. Status of License**

18 Respondent shall, at all times while on probation, maintain an active, current Pharmacist
19 License with the board, including any period during which suspension or probation is tolled.
20 Failure to maintain an active, current Pharmacy License shall be considered a violation of
21 probation.

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

26 **12. License Surrender While on Probation/Suspension**

27 Following the effective date of this decision, should respondent cease practice due to
28 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,

1 respondent may relinquish his Pharmacist License, including any indicia of licensure issued by
2 the board, along with a request to surrender the license. The board or its designee shall have the
3 discretion whether to accept the surrender or take any other action it deems appropriate and
4 reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be
5 subject to the terms and conditions of probation. This surrender constitutes a record of discipline
6 and shall become a part of the respondent's license history with the board.

7 Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall
8 license, including any indicia of licensure not previously provided to the board within ten (10)
9 days of notification by the board that the surrender is accepted if not already provided.
10 Respondent may not reapply for any license from the board for three (3) years from the effective
11 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
12 of the date the application for that license is submitted to the board, including any outstanding
13 costs.

14 **13. Practice Requirement – Extension of Probation**

15 Except during periods of suspension, respondent shall, at all times while on probation, be
16 employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any
17 month during which this minimum is not met shall extend the period of probation by one month.
18 During any such period of insufficient employment, respondent must nonetheless comply with all
19 terms and conditions of probation, unless respondent receives a waiver in writing from the board
20 or its designee.

21 If respondent does not practice as a pharmacist in California for the minimum number of
22 hours in any calendar month, for any reason (including vacation), respondent shall notify the
23 board in writing within ten (10) days of the conclusion of that calendar month. This notification
24 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
25 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume
26 practice at the required level. Respondent shall further notify the board in writing within ten (10)
27 days following the next calendar month during which respondent practices as a pharmacist in
28

1 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
2 considered a violation of probation.

3 It is a violation of probation for respondent's probation to be extended pursuant to the
4 provisions of this condition for a total period, counting consecutive and non-consecutive months,
5 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
6 probation period on its website.

7 **14. Violation of Probation**

8 If respondent has not complied with any term or condition of probation, the board shall
9 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
10 that probation shall automatically be extended, until all terms and conditions have been satisfied
11 or the board has taken other action as deemed appropriate to treat the failure to comply as a
12 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
13 board or its designee may post a notice of the extended probation period on its website.

14 If respondent violates probation in any respect, the board, after giving respondent notice
15 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
16 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
17 probation, or the preparation of an accusation or petition to revoke probation is requested from
18 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
19 probation shall be automatically extended until the petition to revoke probation or accusation is
20 heard and decided, , and the charges and allegations in Accusation No. 7481 shall be deemed true
21 and correct.

22 **15. Completion of Probation**

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

25 **16. No Ownership or Management of Licensed Premises**

26 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
27 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
28 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell

1 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
2 days following the effective date of this decision and shall immediately thereafter provide written
3 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
4 documentation thereof shall be considered a violation of probation.

5 **ACCEPTANCE**

6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Carolyn Park. I understand the stipulation and the effect it will
8 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
9 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
10 Board of Pharmacy.

11
12 DATED: _____
13 **DAVID JOSEPH RICCI**
14 *Respondent*

15 I have read and fully discussed with Respondent David Joseph Ricci the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
17 I approve its form and content.

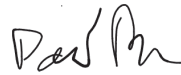
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19 DATED: _____
20 **CAROLYN PARK**
21 *Attorney for Respondent*

1 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
2 days following the effective date of this decision and shall immediately thereafter provide written
3 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
4 documentation thereof shall be considered a violation of probation.

5 **ACCEPTANCE**

6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Carolyn Park. I understand the stipulation and the effect it will
8 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
9 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
10 Board of Pharmacy.


11
12 DATED: 03 / 27 / 2024



13 DAVID JOSEPH RICCI
14 Respondent

15 I have read and fully discussed with Respondent David Joseph Ricci the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
17 I approve its form and content.

18
19 DATED: 03/27/2024


20 CAI
21 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
JOSHUA A. ROOM
Supervising Deputy Attorney General

AMBER N. WIPFLER
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: March 28, 2024

ROB BONTA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General



AMBER N. WIPFLER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7481

1 ROB BONTA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
4 State Bar No. 238484
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
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ACCUSATION

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17 **PHARM90 LLC**
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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.

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STATUTORY AND REGULATORY PROVISIONS

9. Code section 4081 states:

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 manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section 4187, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section.

...

10. Code section 4113 states:

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.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

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

(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.

...

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

...

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

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

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

...

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

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

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.

FACTUAL ALLEGATIONS

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

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. On or about November 22, 2021, Respondent Pharm90-2 filed a Discontinuance of 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.

1 25. On or about April 18, 2022, the Board inspector e-mailed Respondent Ricci with a
2 request for specific pharmacy records from Respondent Pharm90-2. The inspector gave
3 Respondent Ricci a deadline of May 2, 2022 to respond. Respondent Ricci did not respond.

4 26. On or October 12, 2022, the Board inspector again telephoned Respondent Ricci
5 and left a message requesting a return call; however, none was received.

6 27. As a result of Respondent Pharm90-2 and Respondent Ricci failing to respond to
7 the Board inspector's requests for information, the Board was unable to locate any of Respondent
8 Pharm90-2's records.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Failure to Produce Records – Respondents Pharm90-2 and Ricci)**

11 28. Respondents Pharm90-2 and Ricci are subject to discipline under Code sections
12 4081, 4301, subdivision (o), 4332, and 4333 in that, as described in paragraphs 17-27 above,
13 Respondents Pharm90-2 and Ricci failed to produce records related to the sale and acquisition of
14 dangerous drugs.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Subversion of Board Investigation – Respondents Pharm90-2 and Ricci)**

17 29. Respondents Pharm90-2 and Ricci are subject to discipline under Code section
18 4301, subdivisions (o) and (q) in that, as described in paragraphs 17-20 above, Respondents
19 Pharm90-2 and Ricci subverted a Board investigation by failing to respond to requests for
20 information or provide requested records.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Designate PIC – Respondents Pharm90-1 and Pharm90-2)**

23 30. Respondents Pharm90-1 and Pharm90-2 are subject to discipline under Code
24 sections 4113, subdivision (c) and 4301, subdivision (o) in that, as described in paragraph 17
25 above, Respondent Pharm90-1 failed to notify the Board of the disassociation of its former PIC.
26 In addition, Respondents Pharm90-1 and Pharm90-2 failed to designate a new PIC for the
27 Board's approval.

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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