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

12 In the Matter of the Accusation Against:

Case No. 7522

13 **WELLCARE RX, INC., DBA WELLCARE**
14 **RX**
15 **9114 Edinger Ave**
16 **Fountain Valley, CA 92708**

DEFAULT DECISION AND ORDER AS
TO PHU TOM HA

17 **Pharmacy Permit No. PHY 50473,**

[Gov. Code, §11520]

18 **and**

19 **PHU TOM HA**
20 **10142 Traylor Way**
21 **Garden Grove, CA 92843**

22 **Pharmacist License No. RPH 57498**

23 Respondents.

24 **FINDINGS OF FACT**

25 1. On or about September 7, 2023, Complainant Anne Sodergren, in her official
26 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs
27 (Board) filed Accusation No. 7522 against Phu Tom Ha (Respondent) before the Board.
28 (Accusation attached as Exhibit A.)

1 2. On or about August 30, 2005, the Board issued Pharmacist License Number RPH
2 57498 to Phu Tom Ha. The Pharmacist License was in full force and effect at all times relevant
3 to the charges brought herein. It expired on January 31, 2023, and has not been renewed.

4 3. On or about September 14, 2023, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 7522, Statement to Respondent, Notice of Defense, Request
6 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
7 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
8 section 4100, is required to be reported and maintained with the Board. Respondent's address of
9 record was and is: 10142 Traylor Way, Garden Grove, CA 92843.

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505(c) and/or Business and Professions Code section 124.

12 5. Government Code section 11506(c) states, in pertinent part:

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

16 6. The Board takes official notice of its records and the fact that Respondent failed to
17 file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore
18 waived their right to a hearing on the merits of Accusation No. 7522.

19 7. California Government Code section 11520(a) states, in pertinent part:

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 finds that the charges and allegations in Accusation No. 7522, are separately and severally, found
27 to be true and correct by clear and convincing evidence.
28

9. The Board finds that the actual costs for Investigation and Enforcement are \$7,016.75 as of October 5, 2023.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tom Ha Phu has subjected his Pharmacist License No. RPH 57498 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivisions (j) and (o), for violating Health and Safety Code section 111295 and Business and Professions Code section 4169, subdivision (a)(2), in that he held or offered for sale dangerous drugs that were adulterated (i.e., the expired drugs in the active drug inventory) within the meaning of Health and Safety Code section 111255.

b. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivisions (j) and (o), for violating Code of Federal Regulations, title 21, sections 1304.11, subdivisions (a) and (c), in that he failed to maintain complete and accurate inventories of all controlled substances.

c. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations section 1715.65, subdivisions (b) and (c), in that he failed to develop written policies and procedures for performing controlled substance inventory activities and inventory reconciliation reports and failing to prepare inventory reconciliation reports.

d. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section 1714, subdivisions (b) and (c) because he failed to maintain the premises so that drugs could be safely and properly prepared, maintained, secured and distributed.

1 e. Respondent is subject to disciplinary action under Business and Professions Code
2 section 4301, subdivisions (j) and (o), for violating California Code of Regulations, title 16,
3 section 1715, in that he failed to complete pharmacy self-assessments.

4 f. Respondent is subject to disciplinary action under Business and Professions Code
5 section 4301 for unprofessional conduct because he engaged in the aforementioned conduct.

6 **ORDER**

7 IT IS SO ORDERED that Pharmacist License No. RPH 57498 issued to Respondent Phu
8 Tom Ha is revoked. Pursuant to Business and Professions Code section 4307, Phu Tom Ha shall
9 be prohibited from serving as a manager, administrator, owner, member, officer, director,
10 associate, or partner of a licensee until and if Pharmacist License Number RPH 57498 is
11 reinstated.

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

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

17 It is so ORDERED on November 20, 2023.

18 

19 _____
20 Seung W. Oh, Pharm.D.
21 Board President
22 FOR THE BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS

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Exhibit A

Accusation

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

13 In the Matter of the Accusation Against:

Case No. 7522

14 **WELLCARE RX, INC.,**
15 **DBA WELLCARE RX**
16 **PHU TOM HA AND HUY DUC NGUYEN**
17 **OFFICERS AND OWNERS**
18 **9114 Edinger Ave**
19 **Fountain Valley, CA 92708**

ACCUSATION

20 **Pharmacy Permit No. PHY 50473,**

21 **and**

22 **PHU TOM HA**
23 **10142 Traylor Way**
24 **Garden Grove, CA 92843**

25 **Pharmacist License No. RPH 57498**

26 Respondents.

27 **PARTIES**

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

///

2. On or about December 30, 2010, the Board issued Pharmacy Permit Number PHY 50473 to Wellcare Rx, Inc., dba Wellcare Rx (Wellcare Rx). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and was cancelled on November 3, 2022. The Board's records listed Phu Tom Ha as the pharmacist-in-charge of Wellcare Rx and fifty percent shareholder and president of Wellcare Rx, Inc. and Huy Duc Nguyen as the secretary and fifty percent shareholder of Wellcare Rx, Inc.

3. On or about August 30, 2005, the Board issued Pharmacist License Number RPH 57498 to Phu Tom Ha (Phu Ha). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein. It expired on January 31, 2023, and has not been renewed.

JURISDICTION

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

5. Code Section 4011 provides that the Board shall administer and enforce both the Pharmacy Law (Code, § 4000 *et seq.*) and the Uniform Controlled Substances Act (Health & Safety Code, § 11000 *et seq.*).

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

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.

8. Code section 4307, subdivision (a) states:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or

placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

STATUTORY PROVISIONS

9. Code section 4113, subdivision (c) states:

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.

10. Code section 4169, subdivision (a)(2) states:

(a) A person or entity shall not do any of the following:

...

(2) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

11. 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 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs

...

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

...

12. Health and Safety Code section 111255 states:

Any drug or device is adulterated if it has been produced, prepared, packed, or

held under conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

15. Health and Safety Code section 111295 states:

It is unlawful for any person to manufacture, sell, deliver, hold or offer for sale any drug or device that is adulterated.

REGULATORY PROVISIONS

13. Section 1714, subdivisions (b) and (c) of title 16, California Code of Regulations state:

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

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

14. Section 1715 of title 16, California Code of Regulations states:

(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

(b) In addition to the self-assessment required in subdivision (a) of this section, the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

(1) A new pharmacy permit has been issued, or

(2) There is a change in the pharmacist-in-charge, and he or she becomes the new pharmacist-in-charge of a pharmacy.

(3) There is a change in the licensed location of a pharmacy to a new address.

(c) The components of this assessment shall be on Form 17M-13 (Rev. 10/14) entitled "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" or and on Form 17M-14 (Rev. 10/14) entitled "Hospital Pharmacy Self-Assessment" which are hereby incorporated by reference to evaluate compliance with federal and state laws and regulations.

(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is performed.

15. Section 1715.65, subdivisions (b) and (c) of title 16, California Code of Regulations
state:

(b) The pharmacist-in-charge of a pharmacy or consulting pharmacist for a clinic shall review all inventory activities performed and inventory reconciliation reports prepared pursuant to this section, and establish and maintain secure methods to prevent losses of federal controlled substances. Written policies and procedures shall be developed for performing the inventory activities and preparing the inventory reconciliation reports required by this section.

(c) An inventory reconciliation report prepared pursuant to this section shall include all of the following:

(1) A physical count, not an estimate, of all quantities of each federal controlled substance covered by the report that the pharmacy or clinic has in inventory, except as provided in subdivision (h). The biennial inventory of controlled substances required by federal law may serve as one of the mandated inventories under this section in the year where the federal biennial inventory is performed, provided the biennial inventory was taken no more than three months from the last inventory required by this section. An individual who performs the inventory required by this paragraph shall sign and date the inventory or the report in which it is included as provided in subdivision (e)(1);

(2) a review of all acquisitions and dispositions of each federal controlled substance covered by the report since the last inventory reconciliation report covering that controlled substance;

(3) A comparison of (1) and (2) to determine if there are any variances;

(4) Identification of all records used to compile the report, which shall be maintained in the pharmacy or clinic pursuant to subdivision (e)(2);

(5) Identification of each individual involved in preparing the report; and

(6) Possible causes of overages.

16. 21 Code of Federal Regulations section 1304.11, subdivisions (a) and (c) states:

(a) General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be

1 indicated on the inventory.

2 (c) Biennial inventory date. After the initial inventory is taken, the registrant
3 shall take a new inventory of all stocks of controlled substances on hand at least every
4 two years. The biennial inventory may be taken on any date which is within two
5 years of the previous biennial inventory date.

6 **COST RECOVERY**

7 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 **FACTUAL ALLEGATIONS**

12 18. At all relevant times herein, Wellcare Rx was a community pharmacy located in
13 Fountain Valley, California. Phu Ha was the pharmacist-in-charge and partial owner.

14 19. Wellcare Rx's drug inventory shelves and storage areas were dirty, disorganized and
15 cluttered. Additionally, Wellcare Rx held expired drugs in its active drug inventory.

16 20. Wellcare Rx did not possess written policies and procedures for performing inventory
17 activities and inventory reconciliation reports of controlled substances, including a physical count
18 and a review of all acquisitions and dispositions for each controlled substance since the last
19 inventory reconciliation report. Since 2018, Wellcare Rx also failed to prepare inventory
20 reconciliation reports of controlled substances.

21 21. Wellcare Rx did not perform biennial inventories of controlled substances every two
22 years after its initial controlled substance inventory in 2011.

23 22. At the time of the routine inspection in 2021, Wellcare Rx had not completed a
24 pharmacy self-assessment since 2011.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Held or Offered for Sale Adulterated Drugs)**

27 27. Respondents are subject to disciplinary action under Code section 4301, subdivisions
28 (j) and (o), for violating Health and Safety Code section 111295 and Code section 4169,
subdivision (a)(2), in that they held or offered for sale dangerous drugs that were adulterated (i.e.,

1 the expired drugs in the active drug inventory) within the meaning of Health and Safety Code
2 section 111255, as set forth in paragraphs 18 through 22, which are incorporated herein by
3 reference.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Accurate Inventories of Controlled Substances)**

6 23. Respondents are subject to disciplinary action under Code section 4301, subdivisions
7 (j) and (o), for violating Code of Federal Regulations, title 21, sections 1304.11, subdivisions (a)
8 and (c), in that they failed to maintain complete and accurate inventories of all controlled
9 substances, as set forth in paragraphs 18 through 22, which are incorporated herein by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Develop Written Policies and Procedures for Controlled Substance Inventory 12 Reconciliation Reports and Failure to Prepare Inventory Reconciliation Reports)**

13 24. Respondents are subject to disciplinary action under Code section 4301, subdivisions
14 (j) and (o), for violating title 16, California Code of Regulations section 1715.65, subdivisions (b)
15 and (c), in that they failed to develop written policies and procedures for performing controlled
16 substance inventory activities and inventory reconciliation reports and failing to prepare inventory
17 reconciliation reports, as set forth in paragraphs 18 through 22, which are incorporated herein by
18 reference.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Maintain Pharmacy Premises)**

21 25. Respondents are subject to disciplinary action under Code section 4301, subdivisions
22 (j) and (o), for violating title 16, California Code of Regulations, section 1714, subdivisions (b)
23 and (c) because, as described above, they failed to maintain the premises so that drugs could be
24 safely and properly prepared, maintained, secured and distributed, as set forth in paragraphs 18
25 through 22, which are incorporated herein by reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Complete Pharmacy Self-Assessments)**

3 26. Respondents are subject to disciplinary action under Code section 4301, subdivisions
4 (j) and (o), for violating California Code of Regulations, title 16, section 1715, in that they failed
5 to complete pharmacy self-assessments, as set forth in paragraphs 18 through 22, which are
6 incorporated herein by reference.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct)**

9 27. Respondents are subject to disciplinary action under Code section 4301 for
10 unprofessional conduct because they engaged in the conduct as set forth in paragraphs 18 through
11 22, which are incorporated herein by reference.

12 **OTHER MATTERS**

13 28. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
14 50473 issued to Wellcare Rx, Inc., dba Wellcare Rx, it shall be prohibited from serving as a
15 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
16 five years if Pharmacy Permit Number PHY 50473 is placed on probation or until the Pharmacy
17 Permit is reinstated if it is revoked.

18 29. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
19 50473 issued to Wellcare Rx, Inc., dba Wellcare Rx, while Phu Tom Ha has been an owner or
20 manager and had knowledge of or knowingly participated in any conduct for which the licensee
21 was disciplined, he shall be prohibited from serving as a manager, administrator, owner, member,
22 officer, director, associate, or partner of a licensee for five years if the Pharmacy Permit is placed
23 on probation or until the Pharmacy Permit is reinstated, if it is revoked.

24 30. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
25 50473 issued to Wellcare Rx, Inc., dba Wellcare Rx, while Huy Duc Nguyen has been an owner
26 or manager and had knowledge of or knowingly participated in any conduct for which the
27 licensee was disciplined, he shall be prohibited from serving as a manager, administrator, owner,
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member, officer, director, associate, or partner of a licensee for five years if the Pharmacy Permit is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked.

31. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 57498 issued to Phu Tom Ha, he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if the Pharmacist License is placed on probation or until the Pharmacist License 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 50473, issued to Wellcare Rx, Inc., dba Wellcare Rx;

2. Revoking or suspending Pharmacist License Number RPH 57498, issued to Phu Tom Ha;

3. Prohibiting Wellcare Rx, Inc., dba Wellcare Rx from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50473 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;

4. Prohibiting Phu Tom Ha from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50473 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;

5. Prohibiting Huy Duc Nguyen from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50473 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;


6. Prohibiting Phu Tom Ha from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 57498 is placed on probation or until the Pharmacist License is reinstated, if it is revoked;

1 7. Ordering Wellcare Rx, Inc., dba Wellcare Rx and Phu Tom Ha 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 8. Taking such other and further action as deemed necessary and proper.

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6 DATED: 9/7/2023

Sodergren,
Anne@DCA

 Digitally signed by Sodergren,
Anne@DCA
Date: 2023.09.07 19:35:26 -07'00'

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

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