

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

In the Matter of the Accusation Against:

**EXCEL SPECIALTY PHARMACY LLC, dba EXCEL SPECIALTY
PHARMACY LLC; ADEOLA OLUFUNMILAYO EDEMA as
MEMBER, 100% SHAREHOLDER, CEO, DIRECTOR, MANAGER
& PHARMACIST IN CHARGE, Respondents Agency**

Case No. 7527

OAH No. 2024010197

ORDER DENYING RECONSIDERATION

By letter dated, March 25, 2025, respondent timely filed a petition for reconsideration and request for stay of the Board's a Decision after Rejection (Decision) issued on February 26, 2025, to become effective at 5:00 p.m. on March 28, 2025.

The Board granted a stay of the decision until April 7, 2025, at 5:00 p.m. to allow the board time to consider the petition. The Board, having read and considered the petition, hereby denies the petition.

The February 26, 2025, decision is the Board's final decision in this matter and will become effective at 5:00 p.m. on April 7, 2025.

It is so ORDERED on April 7, 2025.

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 written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.
Board President

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Case No. 7527

OAH No. 2024010197

ORDER STAYING EFFECTIVE DATE OF DECISION

Respondent timely requested reconsideration of the decision in the above-entitled matter pursuant to Section 11518.5 of the Government Code. In order to allow the board additional time to consider the petition, in accordance with the provisions of section 11521 of the Government Code,

IT IS HEREBY ORDERED that the effective date of the Decision and Order, in the above-entitled matter is stayed until 5 p.m. on April 7, 2025.

DATED: March 26, 2025

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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MEMBER, 100% SHAREHOLDER, CEO, DIRECTOR, MANAGER
& PHARMACIST IN CHARGE, Respondents**

Agency Case No. 7527

OAH No. 2024010197

DECISION AFTER REJECTION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 28, 2024, by videoconference from Sacramento, California.

Patricia Webber Heim, Deputy Attorney General, represented Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Herbert L. Weinberg, Attorney at Law, Fenton Jurkowitz Law Group, represented Excel Specialty Pharmacy, LLC, doing business as (dba) Excel Specialty Pharmacy LLC

DECISION AFTER REJECTION
CASE NO. 7527

(respondent Excel), and Adeola Olufunmilayo Edema (respondent Edema), who appeared.

Evidence was received, the record closed, and the matter submitted for decision on May 28, 2024.

The ALJ issued a Proposed Decision on June 25, 2024. On September 19, 2024, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision. The Board ordered and subsequently received the transcripts and administrative record of the hearing, and thereafter issued an Order setting January 29, 2025, as the date for the submission of written argument with no new evidence allowed to be presented. Counsel for both parties timely filed written argument.

The Board, having reviewed and considered the entire record, including the transcript and exhibits and written argument submitted by the parties, now issues this Decision After Rejection. The Board agrees with the ALJ that cause exists to discipline both respondent Edema's license and respondent Excel's permit, and finds the ALJ's reasoning as set forth in the Proposed Decision sound and persuasive. However, as set forth herein, the Board has determined that certain modifications to the Proposed Decision, including modifications to the discipline imposed on respondent Edema's license, are warranted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 11, 2010, the Board issued respondent Edema Registered

Pharmacist (RPh) License Number RPH 63688 (license). The license will expire on September 30, 2025, unless renewed.

2. On February 11, 2020, the Board issued respondent Excel Pharmacy Permit Number PHY 57135 (permit), with respondent Edema listed as the Member, 100 percent shareholder, Chief Executive Officer, Director, Manager, and Pharmacist in Charge (PIC). The permit will expire on February 1, 2026, unless renewed.

3. On September 7, 2023, complainant, acting solely in her official capacity, signed and thereafter filed an Accusation against respondents. Complainant alleges respondent Edema's license and respondent Excel's permit are subject to discipline for: (1) holding expired and adulterated medications; (2) dispensing expired medications; (3) failure to complete a controlled substance inventory; (4) failure to compile controlled substance inventory reconciliation reports; (5) failure to transmit a controlled substance prescription to CURES; (6) excessive furnishing of a controlled substance; and (7) failure to adequately maintain records.

4. Complainant separately alleges respondent Edema's license is subject to discipline for: (1) moral turpitude, dishonesty, fraud, deceit, or corruption; (2) knowingly making or signing false documents; (3) subverting a Board investigation; and (4) dispensing unauthorized prescriptions. Complainant also separately alleges respondent Excel's permit is subject to discipline for unprofessional conduct.

5. Respondents timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. All jurisdictional requirements have been met.

Background

6. Every licensed pharmacy in California is required to designate a PIC. The PIC is responsible for the daily operation of the pharmacy. They have the authority to make financial and personnel decisions and re-stock inventory on behalf of the pharmacy. A PIC is also responsible for ensuring the pharmacy's compliance with state and federal laws and regulations pertaining to the practice of pharmacy. Respondent Edema is the PIC at respondent Excel, which is located in Clovis, California.

7. When a pharmacy opens, it is required to perform and record an initial inventory of all controlled substances on hand. It is then required to take a new inventory every two years and perform periodic self-assessments. Additionally, pharmacies are required to compile inventory reconciliation reports for controlled substances on a quarterly basis.

8. The Controlled Substance Utilization Review and Evaluation System (CURES) is a database maintained by the California Department of Justice. Pharmacists are required by law to report filled controlled substance prescriptions to CURES within one working day of dispensing. CURES is intended to reduce the diversion and abuse of controlled substances in California.

Drug Classifications

9. Hydrocodone/acetaminophen is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I)(ii). Hydrocodone/acetaminophen is also known as hydrocodone/APAP. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J). Dilaudid is a brand name for hydromorphone.

Investigation No. 1

10. RPh James Flores has worked as a Board Inspector for the past seven years. His duties include inspecting pharmacies to ensure their compliance with state and federal laws and regulations. RPh Flores testified at hearing. On February 24, 2022, he went to respondent Excel to conduct a routine inspection. While reviewing the active drug stock shelves of the pharmacy, RPh Flores found over 20 expired medications in stock, including a lot of hydrocodone/acetaminophen 15 milliliter oral solution that expired on July 1, 2021. Respondent Edema told him she was the only full-time pharmacy employee and that she was planning to review the expired medications the following week.

11. Respondent Edema provided RPh Flores with respondent Excel's policies and procedures, but she was unable to locate any of the self-assessment documents, inventory records, or controlled substance reconciliation reports. Respondent Edema began crying and said RPh Flores was going to shut her pharmacy down. She told him she was in debt and that the pharmacy was only filling approximately 25 prescriptions per day.

12. RPh Flores decided to return to the pharmacy the next day to finish reviewing the policies and procedures and to enable respondent Edema to look for the documents he had asked to inspect. When he returned, respondent Edema told him she was still unable to locate any recent self-assessments. She also admitted the pharmacy had not been conducting any controlled substance inventories or preparing reconciliation reports. RPh Flores issued an order of correction and requested respondent Edema provide him with Excel's controlled substance dispensing reports from July 1, 2021, through February 24, 2022, so he could determine if any prescriptions had been filled using the expired medications he found in the active

drug stock.

13. On March 11, 2022, respondent Edema emailed the requested documents to RPh Flores. When reviewing the records, he found that it appeared respondent Excel filled a prescription for hydrocodone/acetaminophen 7.5/325 mg per 15 ml oral solution using the stock which expired on July 1, 2021. He contacted respondent Edema and told her he required additional documentation on the acquisition and dispensing history of the hydrocodone/acetaminophen.

14. On July 8, 2022, respondent Edema provided him with the pharmacy's dispensing report for hydrocodone/acetaminophen covering the dates of July 1, 2021, through July 6, 2022. Only three prescriptions appeared on the report. Prescription No. 102982, which was for 60 milliliters, was filled for Patient CA on October 8, 2021. Prescription No. 103037, which was for 60 milliliters, was filled for Patient CA on October 13, 2021. Prescription No. 103389, which was for 300 milliliters, was filled for Patient AD on November 16, 2021.

15. On July 21, 2022, RPh Flores returned to respondent Excel to conduct a follow-up investigation. He asked respondent Edema to provide him with the pharmacy's drug usage report for hydrocodone/acetaminophen covering the entire period the pharmacy had been in business. When she did, RPh Flores noticed a fourth prescription that was not in the previous report. Specifically, the new report indicated that Prescription 108772, which was for 60 milliliters, was filled for Patient CA on June 25, 2021.

16. When RPh Flores asked about the discrepancy, respondent Edema said that the entry reflected a price check for the medication, but that no medication was dispensed to Patient CA on June 25, 2021. The explanation did not make sense to RPh

Flores for two reasons. First, he found it unlikely that a patient would ask for a price check on a medication four months before filling a prescription. Second, prescription numbers are normally assigned numerically in chronological order, with older prescriptions having lower prescription numbers. As such, the June 2021 prescription should have had a lower prescription number than the prescriptions filled in October and November 2021. When RPh Flores questioned her about it, respondent Edema said she had entered it into the system to account for 60 milliliters of hydrocodone/acetaminophen that was dispensed to a patient before respondent Excel was able to process prescriptions through the patient's insurance.

17. While RPh Flores was at respondent Excel on July 21, 2022, respondent Edema became angry with him, and demanded to know why he was investigating her pharmacy. She also said she felt the Board did not want to see a black woman succeed.

18. McKesson Corporation (McKesson) is the pharmaceutical distributor respondent Excel contracts with to obtain hydrocodone/acetaminophen. McKesson provided RPh Flores with invoices which show respondent Excel ordered two bottles of hydrocodone/acetaminophen from McKesson on October 11, 2021, and that the bottles were delivered on October 12, 2021. The records also reflect that the last order McKesson delivered to Excel was the lot that expired on July 1, 2021.

19. Respondent Excel uses a pharmacy prescription program manufactured by Liberty Software. RPh Flores contacted the company to follow up on respondent's explanations for the prescription number that was out of order. He confirmed that the program generates prescription numbers in chronological order as they are entered into the system, and that no prescription number is assigned if a customer requests a

price quote. Additionally, he learned there is a way for the user to change the dispense date of a prescription. However, the system still records the date the prescription is entered, and backdating the dispense date does not alter the prescription number.

20. Using the information he obtained from Liberty Software, in conjunction with additional records provided by respondent Edema, RPh Flores determined Prescription No. 108772 was entered into the program on June 25, 2022. It was deleted from the system on July 21, 2022, within hours of his second inspection.

21. On July 26, 2022, RPh Flores contacted Patient CA's mother. She confirmed Patient CA obtained hydrocodone/acetaminophen from respondent Excel on October 8, 2021, and again on October 13, 2021. She also said the prescriptions were filled with medication in stock, and she was not told any needed to be ordered.

22. On September 7, 2022, RPh Flores obtained the Patient Activity Report for Patient CA from CURES. The report documented that Prescription No. 103037 was submitted to CURES after it was dispensed on October 13, 2021. However, there was no record in CURES of Prescription No. 102982, which was dispensed five days earlier.

Investigation No. 2

23. On August 22, 2022, the Board received an online complaint from Edward LeRoy, M.D., which alleged a pharmacist from respondent Excel dispensed hydrocodone/APAP to one of his patients without authorization. RPh Louisa Tsoi has been a Board Inspector for approximately seven years. She was assigned to investigate Dr. LeRoy's complaint, drafted an investigation report, and testified at hearing about her findings.

24. SPH was one of Dr. LeRoy's patients. She was subject to a pain contract

with Dr. Leroy, which limited the amount of hydrocodone/APAP she could be prescribed to 150 tablets every 30 days. Excel filled her prescription for 150 hydrocodone/APAP tablets on July 28, 2022. At 9:03 a.m. on August 19, 2022, a respondent Excel employee faxed a request to Dr. Leroy to increase the number of tablets to 180 per month. Dr. Leroy's staff faxed a signed response back to respondent Excel at 11:15 a.m. which said "[no,] directions are I q4-6 # 150. I meant it. It is a 30 [-] day supply. Do I have to write max 5/day?" Later that day, despite Dr. LeRoy's directions, respondent Edema dispensed 24 hydrocodone tablets to SPH.

25. RPh Tsoi spoke with respondent Edema about the matter on January 9, 2023. Respondent Edema confirmed that she dispensed the 24 tablets of hydrocodone/APAP to SPH on August 19, 2022. She interpreted Dr. LeRoy's prescription as authorizing SPH to take 6 tablets per day and said that 150 tablets would only last her 25 days. She acted surprised when RPh Tsoi told her that the electronic prescriptions sent by Dr. Leroy specifically stated they were for a 30-day supply.

26. Respondent Edema told RPh Tsoi that SPH suffered from severe back pain and kidney stones. She was previously prescribed 180 hydrocodone per month, but it was insufficient to treat her pain. Dr. LeRoy switched SPH from 180 hydrocodone to 150 hydromorphone tablets per month. SPH did not like how the medication made her feel, so Dr. Leroy switched her back to hydrocodone/APAP.

27. Respondent Edema said SPH came to the pharmacy after it had closed on August 19, 2022. She said she was in extreme pain and that she had lost her medication. Respondent first told RPh Tsoi that Dr. LeRoy sent a prescription for the medication to respondent Excel electronically. She then changed her statement and said Dr. LeRoy authorized the emergency refill verbally. Finally, she said Dr. LeRoy was

supposed to issue an electronic prescription after the fact but never did. When questioned, respondent Edema admitted knowing that controlled substance prescriptions cannot be phoned in to the pharmacy. She was unable to provide RPh Tsoi any records of the fax communications with Dr. LeRoy's office on August 19, 2022.

28. RPh Tsoi asked respondent Edema to provide her with the respondent Excel's customer notes for SPH. The first customer note was created on October 12, 2021, and read as follows:

#120 tablet lasts patient 20 days, she can stretch to 22 days but usually has to pay cash on alternate dilaudid fills so she wouldn't go without medications since both kidneys are now passing stones.

29. On January 10, 2023, before providing the note to RPh Tsoi, respondent Edema added the following sentence to the end of the note created on October 12, 2021:

MD wants patient on 6 tabs/DAY per month and monitors monthly.

RPh Tsoi asked respondent why she modified the note before providing it to the Board. She said she modified the note to accurately reflect the understanding she had with Dr. Leroy. While the initial note addressed a prescription for Dilaudid, respondent intended the sentence she added to the note in January 2023 to refer to hydrocodone/APAP.

30. RPh Tsoi reviewed the CURES Patient Activity Report for SPH and found that much of the information respondent Edema provided was untrue. Dr. LeRoy never

prescribed SPH 180 tablets of hydrocodone/APAP per month. The most he ever prescribed was 150 tablets per month. He prescribed 180 tablets of hydromorphone on one occasion in February 2022.

31. Moreover, RPh Tsoi found that respondent Excel routinely refilled SPH's prescription for hydrocodone early, which resulted in her having more medication at one time than what she had been lawfully prescribed. Between May 9, 2022, and July 28, 2022, respondent Excel dispensed approximately 750 hydrocodone/APAP tablets to SPH.

Respondents' Evidence

32. Respondent Edema testified at hearing. She was born in Nigeria and moved to the United States in 2001. She attended the Massachusetts College of Pharmacy. Before opening Excel, she worked for Walgreens and CVS.

33. Excel opened in 2020 during the height of the COVID-19 pandemic. Respondent Edema acknowledges operating the pharmacy was a "work in progress," and that records were not maintained as they should have been. However, she denies dispensing expired medication to Patient CA on October 8, 2021. On that date, she realized the medication was expired, so she ordered more from McKesson. Respondents received the order on October 12, 2021, and dispensed it to Patient CA the next day. She did not report the October 8 prescription to CURES because she did not dispense it.

34. On August 19, 2022, Patient SPH came to the pharmacy crying hysterically. She said she was passing a kidney stone and fell to the floor. Respondent Edema decided to issue her an emergency prescription. She believed Dr. LeRoy would

support her decision and was surprised he did not.

35. Respondent never intended to mislead Board Inspectors. She was intimidated by RPh Flores. Since the two investigations, respondent Edema believes that all the prior issues with the pharmacy operation have been corrected.

36. Afsheen Lankford is a Pharmacy Technician (PT). She briefly worked as a PT for respondents in 2021. Her duties included filling prescriptions and assisting customers. She always checked the expiration dates on medications before filling prescriptions. She never dispensed an expired medication and she never saw respondent Edema do so either.

37. Respondents submitted several letters of support. One was written by Adeniyi O. Akande, M.D., who has known respondent Edema for over 10 years. Of the allegations in the accusation, Dr. Akande wrote, in part:

In light of the allegations made against Pharmacist Edema, I must emphasize that they are entirely incongruent with the professional and personal character she has consistently displayed throughout her career. I firmly believe that the accusations levied against her are unmerited, and I have complete confidence in her innocence.

Analysis

38. Complainant bears the burden of proving the allegations against respondent Edema by clear and convincing evidence. She bears the burden of proving the allegations against respondent Excel by a preponderance of the evidence.

39. Respondent Edema does not dispute several of the allegations in the Accusation. For instance, she admits errors were made related to inventory and recordkeeping. While she testified that no expired medications were dispensed to any patient, she acknowledges that expired medication was on hand when RPh Flores conducted the routine inspection on February 24, 2022. She is to be commended for her candor in that regard.

40. Despite her testimony to the contrary, the ALJ found, and the Board agrees, that the overwhelming weight of the evidence established that the prescription respondents dispensed to Patient CA on October 8, 2021, was from a stock of medication that expired three months earlier. The ALJ further found, and the Board agrees, that complainant also established that respondents failed to report the prescription to CURES within one day of dispensing as required. In fact, respondents never reported Patient CA's prescription to CURES.

41. The Board also agrees with the ALJ's observation that respondent Edema's continued denials that she engaged in any acts of dishonesty or fraud are quite troubling. After learning of RPh Flores' suspicion that she dispensed expired medication to Patient CA, respondent attempted to backdate his October 2021 prescription to June 25, 2021, and then lied about doing so. After being confronted about the additional prescription entry, she attempted to persuade RPh Flores that it was for a price check. Respondent Edema's testimony that she never dispensed the medication on October 8, 2021, was refuted by Patient CA's mother.

42. Respondent Edema gave multiple conflicting explanations to RPh Tsoi regarding the reasons she dispensed 24 tablets of hydrocodone/APAP to Patient SPH on August 19, 2022. She also altered a patient note for Patient SPH after her discussion

with RPh Tsoi about the quantity of hydrocodone/APAP tablets Patient SPH was prescribed.

43. The ALJ determined, and the Board agrees, that complainant proved that the faxes between Dr. LeRoy's office and respondent Excel were successfully transmitted on August 19, 2022, and that respondents failed to maintain a record of the faxes. In his note, Dr. LeRoy explicitly stated that Patient SPH was not to be prescribed additional medication. Despite that directive, and despite knowing that Patient SPH was subject to a pain contract with Dr. LeRoy, respondent Edema independently decided to prescribe 24 hydrocodone/APAP tablets to Patient SPH, which was enough to last her almost five days. The ALJ found, and the Board agrees, that her testimony that she believed respondent could take up to 6 tablets per day was unpersuasive. Even if Patient SPH was allowed to take up to 6 tablets per day, prescribing her 24 tablets to last from Friday to Monday was clearly excessive, particularly considering that respondent Excel dispensed approximately 750 hydrocodone/APAP tablets to Patient SPH over the course of three months.

44. The only allegation that was not proven at hearing is that respondents dispensed adulterated medication to a patient, which is alleged in the Second Cause for Discipline. Although complainant established that medication was dispensed after the beyond use date on the label, there was insufficient evidence to conclude that the dispensed medication consisted, in whole or in part, of a substance that was filthy, putrid, or decomposed.

Appropriate Discipline

45. The Board has adopted disciplinary guidelines (guidelines) for consideration when determining the appropriate level of discipline for violations of

the Pharmacy Law. (Bus. & Prof. Code, § 4000 et seq.; Cal. Code Regs., tit. 16, § 1760.)¹ The guidelines categorize different violations into one of four categories and specify a recommended minimum and maximum discipline for each category.

46. In this case, the alleged violations regarding inventory, record keeping, and CURES reporting are “Category II” violations with a recommended discipline range from a minimum of revocation, stayed, with probation of three years, to a maximum of revocation. The alleged violations regarding fraud, dispensing drugs without a prescription, and violating the laws governing controlled substances, are “Category III” violations, with a recommended discipline range from a minimum of revocation, stayed, with probation of three to five years, to a maximum of revocation.

47. Factors relevant to determining the appropriate level of discipline include: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings, including citations; (5) number and/or variety of current violations; (6) nature and severity of the acts or offenses under consideration; (7) evidence of aggravation, mitigation, or rehabilitation; (8) time passed since the acts or offenses; and (9) whether the conduct was intentional.

48. While there is no evidence that Patient CA was harmed, respondents’ practice of maintaining expired medications in active stock poses a significant risk to their patients and the public. Respondent Edema was untruthful with Board Inspectors on multiple occasions to subvert their investigation. She altered and subsequently

¹ The Board notes that its disciplinary guidelines were updated as of January 1, 2025. (See Cal. Code Regs., tit. 16, § 1760, effective January 1, 2025, identifying the current version of the guidelines as the document entitled “Disciplinary Guidelines” (Rev. 4/2024).) However, given that the Proposed Decision was issued, and rejected by the Board, prior to the effective date of the updated disciplinary guidelines, the Board has determined it to be appropriate that the previous version of the guidelines (Rev. 2/2017) be applied in this Decision After Rejection.

deleted prescription records, failed to conduct proper inventory, and failed to maintain adequate records regarding the controlled substances that were maintained in stock and dispensed.

49. Respondent Edema prescribed an excessive amount of hydrocodone/APAP to a patient whose use of the drug was restricted by a pain contract, despite being explicitly told by her physician not to. She then gave three different explanations for doing so, none of which were true.

50. To her credit, after 14 years of practice, respondent Edema has no prior disciplinary record with the Board. However, respondents have failed in multiple regards to operate in accordance with the law since the day they opened. Their recordkeeping and inventory practices are woefully insufficient and pose a significant risk to the public. Upon considering all the evidence, the ALJ determined that revocation of respondent Edema's license and respondent Excel's permit is necessary to protect the public health, safety, and welfare. The Board agrees with this determination with respect to respondent Excel's permit. However, given that respondent Edema has no prior disciplinary record with the Board, and that her troubles seemed to start when she opened Excel, the Board believes that a lesser degree of discipline is appropriate for respondent Edema. As set forth below, the Board finds that placing respondent Edema's license on probation for five years upon appropriate terms and conditions will be sufficient to protect the public health, safety, and welfare. This will allow respondent to keep practicing her chosen profession while being closely monitored by the Board for continued compliance.

Costs

51. Complainant requested that respondents be ordered to reimburse the

Board for the reasonable costs of investigation and enforcement of this matter in the total amount of \$28,989. In support of this amount, complainant submitted: (1) a Certification of Prosecution Costs: Declaration of Patricia Webber Heim dated May 21, 2024, with an attached billing summary (AG Certification), which states the Attorney General's Office billed the Board \$16,980 for time spent on this matter (AG Costs); and (2) a Certification of Investigative Costs: Declarations of Louisa Tsoi and James Flores (Investigative Declarations), and a Certification of Costs signed by complainant, which indicate 94 hours of investigative costs at the rate of \$121 per hour, and 5 hours of supervising investigative costs at the rate of \$127 per hour, for a total of \$12,009 (Investigation Costs). Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proof, which is the obligation of a party to produce a particular state of conviction in the mind of the trier of fact as to the existence or nonexistence of a fact. (See *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, §§ 115 and 190.)

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation or a nonprofessional license is preponderance of the evidence. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265; *Coffin v. Department of Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476-477; Evid. Code, § 115.) This evidentiary standard requires complainant to produce evidence of such weight, that when balanced against the contrary, it is more

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persuasive. (*People ex re. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is clear and convincing evidence. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Statutes and Regulations

4. Business and Professions Code section 4300 provides that the Board may suspend or revoke any license, and may suspend the right to practice or place the licensee on probation.

5. Business and Professions Code section 4300.1 provides:

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.

6. Pursuant to Business and Professions Code section 4301, the Board may discipline a licensee for unprofessional conduct, which includes, but is not limited to:

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[¶] . . . [¶]

- (d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

[¶] . . . [¶]

- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

[¶] . . . [¶]

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

[¶] . . . [¶]

- (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 by any other state or federal regulatory agency.

[¶] . . . [¶]

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

7. Business and Professions Code section 4105 provides, in pertinent part:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

[¶] . . . [¶]

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

[¶] . . . [¶]

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an

extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved in the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

[¶] . . . [¶]

8. Business and Professions Code section 4113, subdivision (c), requires the PIC to be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

9. Business and Professions Code section 4169, subdivision (a)(2), provides that a person or entity shall not "[p]urchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated....."

10. Business and Professions Code section 4169, subdivision (a)(4), prohibits the "[p]urchase, trade, sell[ing], or transfer or dangerous devices after the beyond use date on the label."

11. Business and Professions Code section 4306.5 provides:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or

omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

- (b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.
- (c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.
- (d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

12. Business and Professions Code section 4342, subdivision (a), provides:

The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality

and strength, provided in the latest edition of the United States Pharmacopoeia of the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

13. Health and Safety Code section 11150 provides, in pertinent part:

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4050.6 of the Business and Professions Code . . . shall write or issue a prescription.

14. Health and Safety Code, section 11165, subdivision (d), provides that within one working day of dispensing a Schedule II controlled substance, a pharmacy must report the prescription to the Department of Justice. A prescription for a Schedule II controlled substance may not be refilled. (Health & Saf. Code, § 11200, subd. (c).)

15. Health and Safety Code section 111250 provides that a “drug or device is adulterated if it consists, in whole or in part, of any filthy, putrid, or decomposed substance.”

16. Health and Safety Code section 111255 provides that a “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.”

17. Health and Safety Code section 111295 provides that “[i]t is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated.”

18. Code of Federal Regulations, title 21, section 1304.11, subdivision (a), requires that entities registered to dispense controlled substances are required to conduct an inventory and maintain a complete and accurate record of all controlled substances on the date the inventory is conducted. The initial inventory must be taken on the date the registrant first manufactures, distributes, or dispenses controlled substances. (*Id.*, subd. (b).) After the initial inventory is taken, the registrant must conduct a new inventory of all controlled substances on hand at least every two years. (*Id.*, subd. (c).)

19. California Code of Regulations, title 16, section 1715.65, subdivision (a)(1), requires every pharmacy to conduct Schedule II controlled substance inventory reconciliation reports every three months. Pharmacies are also required to conduct stock inventory every two years. (*Id.* at subd. (a)(3)(B).)

First Cause for Discipline

20. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that during a routine pharmacy inspection, respondents were found to have over 20 containers of expired medication in their active drug stock in violation of Health and Safety Code section 111295.

Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Second Cause for Discipline

21. The ALJ found, and the Board agrees, that complainant failed to establish by clear and convincing evidence that respondents dispensed a dangerous drug that was adulterated. Consequently, cause does not exist to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), in conjunction with Business and Professions Code section 4169, subdivision (a)(2).

22. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondents dispensed a dangerous drug after the beyond use date on its label. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), in conjunction with Business and Professions Code section 4169, subdivision (a)(4).

Third Cause for Discipline

23. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema failed to conduct the controlled substance inventories required by Code of Federal Regulations, title 21, section 1304.11. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and

Professions Code section 4301, subdivisions (j) and (o).

Fourth Cause for Discipline

24. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema failed to conduct quarterly Schedule II Controlled Substance Inventory Reconciliations as required by California Code of Regulations, title 16, section 1715.65. Consequently, cause exists to discipline respondent Edema's license and respondent's Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fifth Cause for Discipline

25. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema failed to transmit prescription information to CURES after dispensing a Schedule II controlled substance on October 8, 2021, in violation of Health and Safety Code section 11165, subdivision (d). Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Sixth Cause for Discipline

26. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema committed acts involving dishonesty and deceit when she maintained expired medications in active stock, falsified prescription documents and records, failed to accurately report information to CURES, and provided untruthful statements to Board Inspectors. Consequently, cause

exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (f).

Seventh Cause for Discipline

27. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema falsely altered prescription documents and records pertaining to Patient CA. Consequently, cause exists to discipline respondent Edema's license pursuant to Business and Professions Code section 4301, subdivision (g).

Eighth Cause for Discipline

28. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema falsely altered prescription documents and records and provided incomplete, untruthful, or contradictory information to Board Inspectors. Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (q).

Ninth Cause for Discipline

29. The ALJ found, and the Board agrees, that complainant established by a preponderance of the evidence that respondent Edema, as the PIC of respondent Excel, issued and dispensed a prescription for a Schedule II controlled substance without receiving the prescriber's authorization in violation of Health and Safety Code section 11150. Consequently, cause exists to discipline respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Tenth Cause for Discipline

30. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema dispensed approximately 750 tablets of hydrocodone/APAP to SPH between May 9, 2022, and July 28, 2022, and an additional 24 tablets of hydrocodone/APAP to SPH on August 19, 2022. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (d).

Eleventh Cause for Discipline

31. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema dispensed approximately 750 tablets of hydrocodone/APAP to SPH between May 9, 2022, and July 28, 2022, and an additional 24 tablets of hydrocodone/APAP to SPH on August 19, 2022. Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4306.5.

Twelfth Cause for Discipline

32. The ALJ found, and the Board agrees, that complainant established by a preponderance of the evidence that respondent Edema, as the PIC of respondent Excel, provided conflicting information to the Board and altered a patient note. Consequently, cause exists to discipline respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (f), (j), and (q).

Thirteenth Cause for Discipline

33. The ALJ found, and the Board agrees, that complainant established by a preponderance of the evidence that respondent Excel failed to maintain a successfully transmitted fax prescription record related to the disposition of an unauthorized emergency prescription fill in violation of Business and Professions Code section 4105, subdivisions (a), (c), and (f). Consequently, cause exists to discipline respondent Excel's permit pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fourteenth Cause for Discipline

34. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema issued and dispensed a prescription for a Schedule II controlled substance in violation of Business and Professions Code section 4306.5 and Health and Safety Code sections 11150 and 11200. Consequently, cause exists to discipline respondent Edema's license pursuant for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fifteenth Cause for Discipline

35. The ALJ found, and the Board agrees, that complainant established by clear and convincing evidence that respondent Edema, as the PIC of respondent Excel, failed to maintain a successfully transmitted fax prescription record related to the disposition of an unauthorized emergency prescription fill in violation of Business and Professions Code section 4105, subdivisions (a), (c), and (f). Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Costs

36. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

37. Here, the ALJ determined that respondents were largely unsuccessful in getting charges dismissed or reduced at hearing. The ALJ further found that respondent Edema engaged in multiple acts of deceit to subvert the Board's investigation, and that respondents failed to raise a colorable challenge to the proposed discipline. While respondent Edema told Inspector Flores she was in debt and testified as such at the hearing, respondents presented little evidence that they are unable to pay the Board's costs. Ultimately, the ALJ determined that requested enforcement costs of \$28,989 are reasonable given the issues in the case. Under section 125.3, only an ALJ can order costs to be paid. Accordingly, the costs of \$28,989 ordered by the ALJ are imposed.

Conclusion

38. The Board agrees that the discipline imposed on respondent Excel's

permit by the ALJ is supported by the facts and is necessary for public protection. As set forth below, with respect to respondent Edema's license, the Board has determined that a lesser degree of discipline – revocation, stayed, with probation of five years – is appropriate and sufficient for public protection.

ORDER

Respondent Edema

Registered Pharmacist License No. RPH 63688 issued to Adeola Olufunmilayo Edema is REVOKED ; however, the revocation is stayed and respondent Edema is placed on probation for five years upon the following terms and conditions:

1. **Obey All Laws:** Respondent Edema shall obey all state and federal laws and regulations. Respondent Edema 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 Edema'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 Edema 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 Edema 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 Edema 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 Edema shall timely cooperate with the Board's inspection program and with the Board's

monitoring and investigation of respondent Edema's compliance with the terms and conditions of her 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 Edema 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 Edema shall notify all present and prospective employers of the decision in case number 7527 and the terms, conditions and restrictions imposed on respondent Edema 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 Edema shall report to the Board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of her 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 Edema shall also include the reason(s) for leaving the prior employment. Respondent Edema shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent Edema's employer(s) and supervisor(s), and authorizing those employer(s) or

supervisor(s) to communicate with the Board or its designee, concerning respondent Edema'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 Edema undertaking any new employment, respondent Edema shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7527, 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 respondent Edema's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent Edema shall cause the person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7527, and the terms and conditions imposed thereby.

If respondent Edema works for or is employed by or through an employment service, respondent Edema must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 7527, and the terms and conditions imposed thereby in advance of respondent Edema commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Edema undertaking any new employment by or through an employment service, respondent Edema shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 7527, and the terms and conditions imposed thereby. It shall be respondent Edema's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

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

Number(s): Respondent Edema shall further notify the Board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed

Facilities : During the period of probation, respondent Edema shall not

supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. **Reimbursement of Board Costs:** As a condition precedent to successful completion of probation, respondent Edema shall pay to the Board its costs of investigation and prosecution in the amount of \$28,989.²

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

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

11. **Status of License:** Respondent Edema shall, at all times while on probation, maintain an active, current pharmacist license with the Board, including any period during which suspension or probation is tolled. Failure

² This cost recovery is imposed jointly and severally with respect to respondent Excel's cost recovery, as identified below. In other words, respondent Edema and respondent Excel are jointly and severally liable for a total cost recovery amount of \$28,989.

to maintain an active, current pharmacist license shall be considered a violation of probation.

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

12. License Surrender While on Probation/Suspension:

Following the effective date of this decision, should respondent Edema cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent Edema may relinquish her license, including any indicia of licensure issued by the Board, along with a request to surrender the license. The Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent Edema will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent Edema's license history with the Board.

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

outstanding costs.

13. **Practice Requirement – Extension of Probation:** Except during periods of suspension, respondent Edema shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent Edema must nonetheless comply with all terms and conditions of probation, unless respondent Edema receives a waiver in writing from the Board or its designee.

If respondent Edema does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent Edema shall notify the Board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent Edema will resume practice at the required level. Respondent Edema shall further notify the Board in writing within ten (10) days following the next calendar month during which respondent Edema practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

14. **Ethics Course:** Within sixty (60) calendar days of the effective date of this decision, respondent Edema shall enroll in a course in ethics, at

respondent Edema's expense, approved in advance by the Board or its designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent Edema shall provide proof of enrollment upon request. Within five (5) days of completion, respondent Edema shall submit a copy of the certificate of completion to the Board or its designee. Failure to timely enroll in an approved ethics course, to initiate the course during the first year of probation, to successfully complete it before the end of the second year of probation, or to timely submit proof of completion to the Board or its designee, shall be considered a violation of probation.

15. **No Ownership or Management of Licensed Premises:**

Respondent Edema shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent Edema shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

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

that was stayed. The Board or its designee may post a notice of the extended probation period on its website.

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

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

Respondent Excel

1. Pharmacy Permit No. 57135 issued to Excel Specialty Pharmacy LLC, doing business as Excel Specialty Pharmacy LLC, is REVOKED.

Respondent Excel shall, by the effective date of this decision, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board of all dangerous drugs and/or dangerous devices or controlled substances and dangerous drugs and/or dangerous devices. Respondent Excel shall further arrange for the transfer of all records of acquisition and disposition of dangerous drugs to premises licensed and approved by the Board. Respondent Excel shall provide written proof of such disposition, submit a completed Discontinuance of Business form and return the wall and renewal license to the Board within five (5) days of disposition.

Respondent Excel shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five (5) days of its provision to the pharmacy's ongoing patients, Respondent Excel shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

2. Respondent Excel shall reimburse the Board for its costs of investigation and enforcement in the amount of \$28,989.³ Said amount shall be paid in full prior to the reinstatement of respondent Excel's permit unless otherwise ordered by the Board.

³ This cost recovery is imposed jointly and severally with respect to respondent Edema's cost recovery, as identified above. In other words, respondent Edema and respondent Excel are jointly and severally liable for a total cost recovery amount of \$28,989.

This Decision shall become effective at 5:00 p.m. on March 28, 2025.

It is so ORDERED on February 26, 2025.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

EXCEL SPECIALTY PHARMACY LLC, dba

EXCEL SPECIALTY PHARMACY LLC, ADEOLA OLUFUNMILAYO

EDEMA as MEMBER, 100% SHAREHOLDER, CEO, DIRECTOR,

MANAGER & PHARMACIST IN CHARGE,

Respondents

Case No. 7527

OAH No. 2024010197

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The transcripts (administrative record) of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated September 19, 2024. The California State Board of Pharmacy will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Lupe Baltazar, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or lupe.baltazar@dca.ca.gov on or before **January 29, 2025**.

It is so ORDERED on January 6, 2025.

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 written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

EXCEL SPECIALTY PHARMACY LLC, dba

EXCEL SPECIALTY PHARMACY LLC, ADEOLA OLUFUNMILAYO

EDEMA as MEMBER, 100% SHAREHOLDER, CEO, DIRECTOR,

MANAGER & PHARMACIST IN CHARGE,

Respondents

Case No. 7527

OAH No. 2024010197


ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on September 19, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**EXCEL SPECIALTY PHARMACY LLC, dba EXCEL SPECIALTY
PHARMACY LLC; ADEOLA OLUFUNMILAYO EDEMA as
MEMBER, 100% SHAREHOLDER, CEO, DIRECTOR, MANAGER
& PHARMACIST IN CHARGE, Respondents**

Agency Case No. 7527

OAH No. 2024010197

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 28, 2024, by videoconference from Sacramento, California.

Patricia Webber Heim, Deputy Attorney General, represented Ann Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Herbert L. Weinberg, Attorney at Law, Fenton Jurkowitz Law Group, represented Excel Specialty Pharmacy, LLC, doing business as (dba) Excel Specialty Pharmacy LLC

(respondent Excel), and Adeola Olufunmilayo Edema, (respondent Edema), who appeared.

Evidence was received, the record closed, and the matter submitted for decision on May 28, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 11, 2010, the Board issued respondent Edema Registered Pharmacist (RPh) License Number RPH 63688 (license). The license will expire on September 30, 2025, unless renewed.

2. On February 11, 2020, the Board issued respondent Excel Pharmacy Permit Number PHY 57135 (permit), with respondent Edema listed as the Member, 100 percent shareholder, Chief Executive Officer, Director, Manager, and Pharmacist in Charge (PIC). The permit will expire on February 1, 2025, unless renewed.

3. On September 7, 2023, complainant signed and thereafter filed an Accusation against respondents. Complainant alleges respondent Edema's license and respondent Excel's permit are subject to discipline for: (1) holding expired and adulterated medications; (2) dispensing expired medications; (3) failure to complete a controlled substance inventory; (4) failure to compile controlled substance inventory reconciliation reports; (5) failure to transmit a controlled substance prescription to CURES; (6) excessive furnishing of a controlled substance; and (7) failure to adequately maintain records.

4. Complainant separately alleges respondent Edema's license is subject to discipline for: (1) moral turpitude, dishonesty, fraud, deceit, or corruption; (2) knowingly making or signing false documents; (3) subverting a Board investigation; and (4) dispensing unauthorized prescriptions. Complainant also separately alleges respondent Excel's permit is subject to discipline for unprofessional conduct.

5. Respondents timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Background

6. Every licensed pharmacy in California is required to designate a PIC. The PIC is responsible for the daily operation of the pharmacy. They have the authority to make financial and personnel decisions and re-stock inventory on behalf of the pharmacy. A PIC is also responsible for ensuring the pharmacy's compliance with state and federal laws and regulations pertaining to the practice of pharmacy. Respondent Edema is the PIC at respondent Excel, which is located in Clovis, California.

7. When a pharmacy opens, it is required to perform and record an initial inventory of all controlled substances on hand. It is then required to take a new inventory every two years and perform periodic self-assessments. Additionally, pharmacies are required to compile inventory reconciliation reports for controlled substances on a quarterly basis.

8. The Controlled Substance Utilization Review and Evaluation System (CURES) is a database maintained by the California Department of Justice. Pharmacists are required by law to report filled prescriptions to CURES within one working day of

dispensing. CURES is intended to reduce the diversion and abuse of controlled substances in California.

Drug Classifications

9. Hydrocodone/acetaminophen is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I)(ii). Hydrocodone/acetaminophen is also known as hydrocodone/APAP. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J). Dilaudid is a brand name for hydromorphone.

Investigation No. 1

10. RPh James Flores has worked as a Board Inspector for the past seven years. His duties include inspecting pharmacies to ensure their compliance with state and federal laws and regulations. RPh Flores testified at hearing. On February 24, 2022, he went to respondent Excel to conduct a routine inspection. While reviewing the active drug stock shelves of the pharmacy, RPh Flores found over 20 expired medications in stock, including a lot of hydrocodone/acetaminophen 15 milliliter oral solution that expired on July 1, 2021. Respondent Edema told him she was the only full-time pharmacy employee and that she was planning to review the expired medications the following week.

11. Respondent Edema provided RPh Flores with respondent Excel's policies and procedures, but she was unable to locate any of the self-assessment documents, inventory records, or controlled substance reconciliation reports. Respondent Edema began crying and said RPh Flores was going to shut her pharmacy down. She told him she was in debt and that the pharmacy was only filling approximately 25 prescriptions per day.

12. RPh Flores decided to return to the pharmacy the next day to finish reviewing the policies and procedures and to enable respondent Edema to look for the documents he had asked to inspect. When he returned, respondent Edema told him she was still unable to locate any recent self-assessments. She also admitted the pharmacy had not been conducting any controlled substance inventories or preparing reconciliation reports. RPh Flores issued an order of correction and requested respondent Edema provide him with Excel's controlled substance dispensing reports from July 1, 2021, through February 24, 2022, so he could determine if any prescriptions had been filled using the expired medications he found in the active drug stock.

13. On March 11, 2022, respondent Edema emailed the requested documents to RPh Flores. When reviewing the records, he found that it appeared respondent Excel filled a prescription for hydrocodone/acetaminophen 7.5/325 mg per 15 ml oral solution using the stock which expired on July 1, 2021. He contacted respondent Edema and told her he required additional documentation on the acquisition and dispensing history of the hydrocodone/acetaminophen.

14. On July 8, 2022, respondent Edema provided him with the pharmacy's dispensing report for hydrocodone/acetaminophen covering the dates of July 1, 2021, through July 6, 2022. Only three prescriptions appeared on the report. Prescription No. 102982, which was for 60 milliliters, was filled for Patient CA on October 8, 2021. Prescription No. 103037, which was for 60 milliliters, was filled for Patient CA on October 13, 2021. Prescription No. 103389, which was for 300 milliliters, was filled for Patient AD on November 16, 2021.

15. On July 21, 2022, RPh Flores returned to respondent Excel to conduct a follow-up investigation. He asked respondent Edema to provide him with the

pharmacy's drug usage report for hydrocodone/acetaminophen covering the entire period the pharmacy had been in business. When she did, RPh Flores noticed a fourth prescription that was not in the previous report. Specifically, the new report indicated that Prescription 108772, which was for 60 milliliters, was filled for Patient CA on June 25, 2021.

16. When RPh Flores asked about the discrepancy, respondent Edema said that the entry reflected a price check for the medication, but that no medication was dispensed to Patient CA on June 25, 2021. The explanation did not make sense to RPh Flores for two reasons. First, he found it unlikely that a patient would ask for a price check on a medication four months before filling a prescription. Second, prescription numbers are normally assigned numerically in chronological order, with older prescriptions having lower prescription numbers. As such, the June 2021 prescription should have had a lower prescription number than the prescriptions filled in October and November 2021. When RPh Flores questioned her about it, respondent Edema said she had entered it into the system to account for 60 milliliters of hydrocodone/acetaminophen that was dispensed to a patient before respondent Excel was able to process prescriptions through the patient's insurance.

17. While RPh Flores was at respondent Excel on July 21, 2022, respondent Edema became angry with him, and demanded to know why he was investigating her pharmacy. She also said she felt the Board did not want to see a black woman succeed.

18. McKesson Corporation (McKesson) is the pharmaceutical distributor respondent Excel contracts with to obtain hydrocodone/acetaminophen. McKesson provided RPh Flores with invoices which show respondent Excel ordered two bottles of hydrocodone/acetaminophen from McKesson on October 11, 2021, and that the

bottles were delivered on October 12, 2021. The records also reflect that the last order McKesson delivered to Excel was the lot that expired on July 1, 2021.

19. Respondent Excel uses a pharmacy prescription program manufactured by Liberty Software. RPh Flores contacted the company to follow up on respondent's explanations for the prescription number that was out of order. He confirmed that the program generates prescription numbers in chronological order as they are entered into the system, and that no prescription number is assigned if a customer requests a price quote. Additionally, he learned there is a way for the user to change the dispense date of a prescription. However, the system still records the date the prescription is entered, and backdating the dispense date does not alter the prescription number.

20. Using the information he obtained from Liberty Software, in conjunction with additional records provided by respondent Edema, RPh Flores determined Prescription No. 108772 was entered into the program on June 25, 2022. It was deleted from the system on July 21, 2022, within hours of his second inspection.

21. On July 26, 2022, RPh Flores contacted Patient CA's mother. She confirmed Patient CA obtained hydrocodone/acetaminophen from respondent Excel on October 8, 2021, and again on October 13, 2021. She also said the prescriptions were filled with medication in stock, and she was not told any needed to be ordered.

22. On September 7, 2022, RPh Flores obtained the Patient Activity Report for Patient CA from CURES. The report documented that Prescription No. 103037 was submitted to CURES after it was dispensed on October 13, 2021. However, there was no record in CURES of Prescription No. 102982, which was dispensed five days earlier.

Investigation No. 2

23. On August 22, 2022, the Board received an online complaint from Edward LeRoy, M.D., which alleged a pharmacist from respondent Excel dispensed hydrocodone/APAP to one of his patients without authorization. RPh Louisa Tsoi has been a Board Inspector for approximately seven years. She was assigned to investigate Dr. LeRoy's complaint, drafted an investigation report, and testified at hearing about her findings.

24. SPH was one of Dr. LeRoy's patients. She was subject to a pain contract with Dr. Leroy, which limited the amount of hydrocodone/APAP she could be prescribed to 150 tablets every 30 days. Excel filled her prescription for 150 hydrocodone/APAP tablets on July 28, 2022. At 9:03 a.m. on August 19, 2022, a respondent Excel employee faxed a request to Dr. Leroy to increase the number of tablets to 180 per month. Dr. Leroy's staff faxed a signed response back to respondent Excel at 11:15 a.m. which said "[no,] directions are I q4-6 # 150. I meant it. It is a 30 [-] day supply. Do I have to write max 5/day?" Later that day, despite Dr. LeRoy's directions, respondent Edema dispensed 24 hydrocodone tablets to SPH.

25. RPh Tsoi spoke with respondent Edema about the matter on January 9, 2023. Respondent Edema confirmed that she dispensed the 24 tablets of hydrocodone/APAP to SPH on August 19, 2021. She interpreted Dr. LeRoy's prescription as authorizing SPH to take 6 tablets per day and said that 150 tablets would only last her 25 days. She acted surprised when RPh Tsoi told her that the electronic prescriptions sent by Dr. Leroy specifically stated they were for a 30-day supply.

26. Respondent Edema told RPh Tsoi that SPH suffered from severe back pain and kidney stones. She was previously prescribed 180 hydrocodone per month, but it was insufficient to treat her pain. Dr. LeRoy switched SPH from 180 hydrocodone to 150 hydromorphone tablets per month. SPH did not like how the medication made her feel, so Dr. Leroy switched her back to hydrocodone/APAP.

27. Respondent Edema said SPH came to the pharmacy after it had closed on August 19, 2022. She said she was in extreme pain and that she had lost her medication. Respondent first told RPh Tsoi that Dr. LeRoy sent a prescription for the medication to respondent Excel electronically. She then changed her statement and said Dr. LeRoy authorized the emergency refill verbally. Finally, she said Dr. LeRoy was supposed to issue an electronic prescription after the fact but never did. When questioned, respondent Edema admitted knowing that controlled substance prescriptions cannot be phoned in to the pharmacy. She was unable to provide RPh Tsoi any records of the fax communications with Dr. LeRoy's office on August 19, 2022.

28. RPh Tsoi asked respondent Edema to provide her with the respondent Excel's customer notes for SPH. The first customer note was created on October 12, 2021, and read as follows:

#120 tablet lasts patient 20 days, she can stretch to 22 days but usually has to pay cash on alternate dilaudid fills so she wouldn't go without medications since both kidneys are now passing stones.

29. On January 10, 2023, before providing the note to RPh Tsoi, respondent Edema added the following sentence to the end of the note created on October 12, 2021:

MD wants patient on 6 tabs/DAY per month and monitors monthly.

RPh Tsoi asked respondent why she modified the note before providing it to the Board. She said she modified the note to accurately reflect the understanding she had with Dr. Leroy. While the initial note addressed a prescription for Dilaudid, respondent intended the sentence she added to the note in January 2023 to refer to hydrocodone/APAP.

30. RPh Tsoi reviewed the CURES Patient Activity Report for SPH and found that much of the information respondent Edema provided was untrue. Dr. LeRoy never prescribed SPH 180 tablets of hydrocodone/APAP per month. The most he ever prescribed was 150 tablets per month. He prescribed 180 tablets of hydromorphone on one occasion in February 2022.

31. Moreover, RPh Tsoi found that respondent Excel routinely refilled SPH's prescription for hydrocodone early, which resulted in her having more medication at one time than what she had been lawfully prescribed. Between May 9, 2022, and July 28, 2022, respondent Excel dispensed approximately 750 hydrocodone/APAP tablets to SPH.

Respondents' Evidence

32. Respondent Edema testified at hearing. She was born in Nigeria and moved to the United States in 2001. She attended the Massachusetts College of Pharmacy. Before opening Excel, she worked for Walgreens and CVS.

33. Excel opened in 2020 during the height of the COVID-19 pandemic. Respondent Edema acknowledges operating the pharmacy was a "work in progress,"

and that records were not maintained as they should have been. However, she denies dispensing expired medication to Patient CA on October 8, 2021. On that date, she realized the medication was expired, so she ordered more from McKesson.

Respondents received the order on October 12, 2021, and dispensed it to Patient CA the next day. She did not report the October 8 prescription to CURES because she did not dispense it.

34. On August 19, 2022, Patient SPH came to the pharmacy crying hysterically. She said she was passing a kidney stone and fell to the floor. Respondent Edema decided to issue her an emergency prescription. She believed Dr. LeRoy would support her decision and was surprised he did not.

35. Respondent never intended to mislead Board Inspectors. She was intimidated by RPh Flores. Since the two investigations, respondent Edema believes that all the prior issues with the pharmacy operation have been corrected.

36. Afsheen Lankford is a Pharmacy Technician (PT). She briefly worked as a PT for respondents in 2021. Her duties included filling prescriptions and assisting customers. She always checked the expiration dates on medications before filling prescriptions. She never dispensed an expired medication and she never saw respondent Edema do so either.

37. Respondents submitted several letters of support. One was written by Adeniyi O. Akande, M.D., who has known respondent Edema for over 10 years. Of the allegations in the accusation, Dr. Akande wrote, in part:

In light of the allegations made against Pharmacist Edema, I must emphasize that they are entirely incongruent with the professional and personal character she has consistently

displayed throughout her career. I firmly believe that the accusations levied against her are unmerited, and I have complete confidence in her innocence.

Analysis

38. Complainant bears the burden of proving the allegations against respondent Edema by clear and convincing evidence. She bears the burden of proving the allegations against respondent Excel by a preponderance of the evidence.

39. Respondent Edema does not dispute several of the allegations in the Accusation. For instance, she admits errors were made related to inventory and recordkeeping. While she testified that no expired medications were dispensed to any patient, she acknowledges that expired medication was on hand when RPh Flores conducted the routine inspection on February 24, 2022. She is to be commended for her candor in that regard.

40. Despite her testimony to the contrary, the overwhelming weight of the evidence established that the prescription respondents dispensed to Patient CA on October 8, 2021, was from a stock of medication that expired three months earlier. Complainant also established that respondents failed to report the prescription to CURES within one day of dispensing as required. In fact, respondents never reported Patient CA's prescription to CURES.

41. More troubling however, are respondent Edema's continued denials that she engaged in any acts of dishonesty or fraud. After learning of RPh Flores' suspicion that she dispensed expired medication to Patient CA, respondent attempted to backdate his October 2021 prescription to June 25, 2021, and then lied about doing so. After being confronted about the additional prescription entry, she attempted to

persuade RPh Flores that it was for a price check. Respondent Edema's testimony that she never dispensed the medication on October 8, 2021, was refuted by Patient CA's mother.

42. Respondent Edema gave multiple conflicting explanations to RPh Tsoi regarding the reasons she dispensed 24 tablets of hydrocodone/APAP to Patient SPH on August 19, 2022. She also altered a patient note for Patient SPH after her discussion with RPh Tsoi about the quantity of hydrocodone/APAP tablets Patient SPH was prescribed.

43. Complainant proved that the faxes between Dr. LeRoy's office and respondent Excel were successfully transmitted on August 19, 2022, and that respondents failed to maintain a record of the faxes. In his note, Dr. LeRoy explicitly stated that Patient SPH was not to be prescribed additional medication. Despite that directive, and despite knowing that Patient SPH was subject to a pain contract with Dr. LeRoy, respondent Edema independently decided to prescribe 24 hydrocodone/APAP tablets to Patient SPH, which was enough to last her almost five days. Her testimony that she believed respondent could take up to 6 tablets per day was unpersuasive. Even if Patient SPH was allowed to take up to 6 tablets per day, prescribing her 24 tablets to last from Friday to Monday was clearly excessive, particularly considering that respondent Excel dispensed approximately 750 hydrocodone/APAP tablets to Patient SPH over the course of three months.

44. The only allegation that was not proven at hearing is that respondents dispensed adulterated medication to a patient, which is alleged in the Second Cause for Discipline. Although complainant established that medication was dispensed after the beyond use date on the label, there was insufficient evidence to conclude that the

dispensed medication consisted, in whole or in part, of a substance that was filthy, putrid, or decomposed.

Appropriate Discipline

45. The Board has adopted disciplinary guidelines (guidelines) for consideration when determining the appropriate level of disciplines for violations of the Pharmacy Law. (Bus. & Prof. Code, § 4000 et seq.; Cal. Code Regs., tit. 16, § 1760.) The guidelines categorize different violations into one of four categories and specify a recommended minimum and maximum discipline for each category.

46. In this case, the alleged violations regarding inventory, record keeping, and CURES reporting are “Category II” violations with a recommended discipline range from a minimum of revocation, stayed, with probation of three years, to a maximum of revocation. The alleged violations regarding fraud, dispensing drugs without a prescription, and violating the laws governing controlled substances, are “Category III” violations, with a recommended discipline range from a minimum of revocation, stayed, with probation of three to five years, to a maximum of revocation.

47. Factors relevant to determining the appropriate level of discipline include: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings, including citations; (5) number and/or variety of current violations; (6) nature and severity of the acts or offenses under consideration; (7) evidence of aggravation, mitigation, or rehabilitation; (8) time passed since the acts or offenses; and (9) whether the conduct was intentional.

48. While there is no evidence that Patient CA was harmed, respondents’ practice of maintaining expired medications in active stock poses a significant risk to their patients and the public. Respondent Edema was untruthful with Board Inspectors

on multiple occasions to subvert their investigation. She altered and subsequently deleted prescription records, failed to conduct proper inventory, and failed to maintain adequate records regarding the controlled substances that were maintained in stock and dispensed.

49. Respondent Edema prescribed an excessive amount of hydrocodone/APAP to a patient whose use of the drug was restricted by a pain contract, despite being explicitly told by her physician not to. She then gave three different explanations for doing so, none of which were true.

50. To her credit, after 14 years of practice, respondent Edema has no prior disciplinary record with the Board. However, respondents have failed in multiple regards to operate in accordance with the law since the day they opened. Their recordkeeping and inventory practices are woefully insufficient and pose a significant risk to the public. When all the evidence is considered, revocation of respondent Edema's license and respondent Excel's permit is necessary to protect the public health, safety, and welfare.

Costs

51. Complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of investigation and enforcement of this matter in the total amount of \$28,989. In support of this amount, complainant submitted: (1) a Certification of Prosecution Costs: Declaration of Patricia Webber Heim dated May 21, 2024, with an attached billing summary (AG Certification), which states the Attorney General's Office billed the Board \$16,980 for time spent on this matter (AG Costs); and (2) a Certification of Investigative Costs: Declarations of Louisa Tsoi and James Flores (Investigative Declarations), and a Certification of Costs signed by complainant, which

indicate 94 hours of investigative costs at the rate of \$121 per hour, and 5 hours of supervising investigative costs at the rate of \$127 per hour, for a total of \$12,009 (Investigation Costs). Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proof, which is the obligation of a party to produce a particular state of conviction in the mind of the trier of fact as to the existence or nonexistence of a fact. (See *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, §§ 115 and 190.)

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a nonprofessional license is preponderance of the evidence. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265; *Coffin v. Department of Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476-477; Evid. Code, § 115.) This evidentiary standard requires complainant to produce evidence of such weight, that when balanced against the contrary, it is more persuasive. (*People ex re. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is clear and convincing evidence. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently

strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Statutes and Regulations

4. Business and Professions Code section 4300 provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

5. Business and Professions Code section 4300.1 provides:

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.

6. Pursuant to Business and Professions Code section 4301, the Board may discipline a licensee for unprofessional conduct, which includes, but is not limited to:

[¶] . . . [¶]

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

[¶] . . . [¶]

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

[¶] . . . [¶]

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

[¶] . . . [¶]

(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 by any other state or federal regulatory agency.

[¶] . . . [¶]

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

7. Business and Professions Code section 4105 provides, in pertinent part:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

[§] . . . [§]

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

[§] . . . [§]

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved in the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

[¶] . . . [¶]

8. Business and Professions Code section 4113, subdivision (c), requires the PIC to be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

9. Business and Professions Code section 4156 provides:

A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the act would constitute unprofessional conduct under any statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be bound by the laws and regulations that apply to a person licensed under this chapter.

10. Business and Professions Code section 4169, subdivision (a)(2), provides that a person or entity shall not "[p]urchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated....."

11. Business and Professions Code section 4169, subdivision (a)(4), prohibits the "[p]urchase, trade, sell[ing], or transfer or dangerous devices after the beyond use date on the label."

12. Business and Professions Code section 4306.5 provides:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training,

or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

13. Business and Professions Code section 4342, subdivision (a), provides:

The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality

and strength, provided in the latest edition of the United States Pharmacopoeia of the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

14. Health and Safety Code section 11150 provides, in pertinent part:

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4050.6 of the Business and Professions Code . . . shall write or issue a prescription.

15. Health and Safety Code, section 11165, subdivision (d), provides that within one working day of dispensing a Schedule II controlled substance, a pharmacy must report the prescription to the Department of Justice. A prescription for a Schedule II controlled substance may not be refilled. (Health & Saf. Code, § 11200, subd. (c).)

16. Health and Safety Code section 111250 provides that a "drug or device is adulterated if it consists, in whole or in part, of any filthy, putrid, or decomposed substance."

17. Health and Safety Code section 111255 provides that a "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.”

18. Business and Professions Code section 111295 provides that “[i]t is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated.”

19. Code of Federal Regulations, title 21, section 1304.11, subdivision (a), requires that entities registered to dispense controlled substances are required to conduct an inventory and maintain a complete and accurate record of all controlled substances on the date the inventory is conducted. The initial inventory must be taken on the date the registrant first manufactures, distributes, or dispenses controlled substances. (*Id.*, subd. (b).) After the initial inventory is taken, the registrant must conduct a new inventory of all controlled substances on hand at least every two years. (*Id.*, subd. (c).)

20. California Code of Regulations, title 16, section 1715.65, subdivision (a)(1), requires every pharmacy to conduct Schedule II controlled substance inventory reconciliation reports every three months. Pharmacies are also required to conduct stock inventory every two years. (*Id.* at subd. (a)(3)(B).)

First Cause for Discipline

21. Complainant established by clear and convincing evidence that during a routine pharmacy inspection, respondents were found to have over 20 containers of expired medication in their active drug stock in violation of Health and Safety Code section 111295. Consequently, cause exists to discipline respondent Edema’s license and respondent Excel’s permit for unprofessional conduct pursuant to Business and Professions Code 4301, subdivisions (j) and (o).

Second Cause for Discipline

22. Complainant failed to establish by clear and convincing evidence that respondents dispensed a dangerous drug that was adulterated. Consequently, cause does not exist to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), in conjunction with Business and Professions Code section 4169, subdivision (a)(2).

23. Complainant established by clear and convincing evidence that respondents dispensed a dangerous drug after the beyond use date on its label. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j) and (o), in conjunction with Business and Professions Code section 4169, subdivision (a)(4).

Third Cause for Discipline

24. Complainant established by clear and convincing evidence that respondent Edema failed to conduct the controlled substance inventories required by Code of Federal Regulations, title 21, section 1304.11. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fourth Cause for Discipline

25. Complainant established by clear and convincing evidence that respondent Edema failed to conduct quarterly Schedule II Controlled Substance

Inventory Reconciliations as required by California Code of Regulations, title 16, section 1715.65. Consequently, cause exists to discipline respondent Edema's license and respondent's Excel's permit for unprofessional Conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fifth Cause for Discipline

26. Complainant established by clear and convincing evidence that respondent Edema failed to transmit prescription information to CURES after dispensing a Schedule II controlled substance on October 8, 2021, in violation of Health and Safety Code section 11165, subdivision (d). Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Sixth Cause for Discipline

27. Complainant established by clear and convincing evidence that respondent Edema committed acts involving dishonesty and deceit when she maintained expired medications in active stock, falsified prescription documents and records, failed to accurately report information to CURES, and provided untruthful statements to Board Inspectors. Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (f).

Seventh Cause for Discipline

28. Complainant established by clear and convincing evidence that respondent Edema falsely altered prescription documents and records pertaining to

Patient CA. Consequently, cause exists to discipline respondent Edema's license pursuant to Business and Professions Code section 4301, subdivision (g).

Eighth Cause for Discipline

29. Complainant established by clear and convincing evidence that respondent Edema falsely altered prescription documents and records and provided incomplete, untruthful, or contradictory information to Board Inspectors. Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (q).

Ninth Cause for Discipline

30. Complainant established by a preponderance of the evidence that respondent Edema, as the PIC of respondent Excel, issued and dispensed a prescription for a Schedule II controlled substance without receiving the prescriber's authorization in violation of Health and Safety Code section 11150. Consequently, cause exists to discipline respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Tenth Cause for Discipline

31. Complainant established by clear and convincing evidence that respondent Edema dispensed approximately 750 tablets of hydrocodone/APAP to SPH between May 9, 2022, and July 28, 2022, and an additional 24 tablets of hydrocodone/APAP to SPH on August 19, 2022. Consequently, cause exists to discipline respondent Edema's license and respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (d).

Eleventh Cause for Discipline

32. Complainant established by clear and convincing evidence that respondent Edema dispensed approximately 750 tablets of hydrocodone/APAP to SPH between May 9, 2022, and July 28, 2022, and an additional 24 tablets of hydrocodone/APAP to SPH on August 19, 2022. Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4306.5.

Twelfth Cause for Discipline

33. Complainant established by a preponderance of the evidence that respondent Edema, as the PIC of respondent Excel, provided conflicting information to the Board and altered a patient note. Consequently, cause exists to discipline respondent Excel's permit for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (f), (j), and (q).

Thirteenth Cause for Discipline

34. Respondent established by a preponderance of the evidence that respondent Excel failed to maintain a successfully transmitted fax prescription record related to the disposition of an unauthorized emergency prescription fill in violation of Business and Professions Code section 4105, subdivisions (a), (c), and (f). Consequently, cause exists to discipline respondent Excel's permit pursuant to Business and Professions Code section (j) and (o).

Fourteenth Cause for Discipline

35. Complainant established by clear and convincing evidence that respondent Edema issued and dispensed a prescription for a Schedule II controlled

substance in violation of Business and Professions Code section 4306.5 and Health and Safety Code sections 11150 and 11200. Consequently, cause exists to discipline respondent Edema's license pursuant for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Fifteenth Cause for Discipline

36. Complainant established by clear and convincing evidence that respondent Edema, as the PIC of respondent Excel, failed to maintain a successfully transmitted fax prescription record related to the disposition of an unauthorized emergency prescription fill in violation of Business and Professions Code section 4105, subdivision (a), (c), and (f). Consequently, cause exists to discipline respondent Edema's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

Costs

37. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

38. Here, respondents were largely unsuccessful in getting charges dismissed or reduced at hearing. Respondent Edema engaged in multiple acts of deceit to subvert the Board's investigation. Respondents failed to raise a colorable challenge to the proposed discipline. While respondent Edema told Inspector Flores she was in debt and testified as such at the hearing, respondents presented little evidence that they are unable to pay the Board's costs. Finally, the requested enforcement costs of \$28,989 are reasonable given the issues in the case.

ORDER

1. Registered Pharmacist License No. RPH 63688 issued to Adeola Olufunmilayo Edema is REVOKED.
2. Adeola Olufunmilayo Edema is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee until Registered Pharmacist License No. 63688 is reinstated.
3. Pharmacy Permit No. 57135 issued to Excel Specialty Pharmacy LLC, doing business as Excel Specialty Pharmacy LLC, is REVOKED.
4. Respondents, jointly and severally, shall reimburse the Board for its costs of investigation and enforcement in the amount of \$28,989.

DATE: June 25, 2024

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings

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8
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. 7527

14 **EXCEL SPECIALTY PHARMACY LLC,**
15 **dba EXCEL SPECIALTY PHARMACY**
16 **LLC; ADEOLA OLUFUNMILAYO**
17 **EDEMA as MEMBER, 100%**
18 **SHAREHOLDER, CEO, DIRECTOR,**
19 **MANAGER & PHARMACIST-IN-**
20 **CHARGE**
21 **604 N. Magnolia Ave., Ste. 105**
22 **Clovis, CA 93611**

ACCUSATION

23 **Pharmacy Permit Number PHY 57135,**

24 **and**

25 **ADEOLA OLUFUNMILAYO EDEMA**
26 **3338 Duncan Ave.**
27 **Clovis, CA 93619**

28 **Pharmacist License Number RPH 63688**

Respondents.

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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 February 11, 2020, the Board issued Pharmacy Permit Number PHY
5 57135 to Excel Specialty Pharmacy LLC, doing business as Excel Specialty Pharmacy LLC
6 (Respondent Excel). Adelola Olufunmilayo Edema (Respondent Edema) is and has been a
7 Member, 100% Shareholder, Chief Executive Officer, Director, and Manager of Respondent
8 Excel since February 11, 2020. Respondent Edema is and has been the Pharmacist-in-Charge
9 (PIC) since February 11, 2020. The Pharmacy Permit was in full force and effect at all times
10 relevant to the charges brought herein and will expire on February 1, 2024, unless renewed.

11 3. On or about February 11, 2010, the Board issued Pharmacist License Number RPH
12 63688 to Respondent Edema. The Pharmacist License was in full force and effect at all times
13 relevant to the charges brought herein and will expire on September 30, 2023, unless renewed.

14 **JURISDICTION**

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

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

21 6. Section 4300 of the Code states, in pertinent part:

22 (a) Every license issued may be suspended or revoked.

23 (b) The board shall discipline the holder of any license issued by the board,
24 whose default has been entered or whose case has been heard by the board and found
guilty, by any of the following methods:

25 (1) Suspending judgment.

26 (2) Placing him or her upon probation.

27 (3) Suspending his or her right to practice for a period not exceeding one
28 year.

1 (4) Revoking his or her license.

2 (5) Taking any other action in relation to disciplining him or her as the board
3 in its discretion may deem proper.

4

5 (e) The proceedings under this article shall be conducted in accordance with
6 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
7 Government Code, and the board shall have all the powers granted therein. The
8 action shall be final, except that the propriety of the action is subject to review by the
9 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

10 7. Section 4300.1 of the Code states:

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

17 8. Section 4301 of the Code states, in pertinent part:

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

21

22 (d) The clearly excessive furnishing of controlled substances in violation of
23 subdivision (a) of Section 11153 of the Health and Safety Code.

24

25 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
26 deceit, or corruption, whether the act is committed in the course of relations as a
27 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

. . . .

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

. . . .

(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.

....

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

9. Code section 4307 states:

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

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

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

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

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board’s authority to proceed under Section 4339 or any other provision of law.

STATUTORY PROVISIONS

10. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or

order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Section 4105 of the Code states, in pertinent part:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

....

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

....

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved if the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

12. Section 4113 of the Code states, in pertinent part:

(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.

....

13. Section 4156 of the Code states that "A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the act would constitute unprofessional conduct under any statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be bound by the laws and regulations that apply to a person licensed under this chapter."

14. Section 4169 of the Code states in pertinent part:

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

....

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 11250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

....

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

15. Section 4306.5 of the Code states:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

16. Section 4342 of the Codes states, in pertinent part:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

17. Section 11150 of the Health and Safety Code states in pertinent part:

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4050.6 of the Business and Professions Code . . . shall write or issue a prescription.

18. Section 11165 of the Health and Safety Code states, in pertinent part:

....

(d) For each prescription for a Schedule II, Schedule III, Schedule IV, or Schedule V controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and

1308.15, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispense shall report the following information to the department or contracted prescription date processing vendor as soon as reasonably possible, but not more than one working day after the date a controlled substance is released to the patient or patient's representative, in a format specified by the department:

....

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of a prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) The International Statistical Classification of Diseases (ICD) Code contained in the most current ICD revision, or any revision deemed sufficient by the State Board of Pharmacy, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Prescribing date of the prescription.

(10) Date of dispensing the prescription.

(11) The serial number of the corresponding prescription form, if available.

19. Section 11200 of the Health and Safety Code states, in pertinent part:

....

(c) No prescription for a Schedule II substance may be refilled.

....

20. Section 111250 of the Health and Safety Code states that any drug or device is adulterated if it consists, in whole or in part, of any filthy, putrid, or decomposed substance.

///

1 controlled substances. Except as provided in subdivisions (f) and (g), inventory
2 reconciliation reports shall be prepared on the following ongoing basis:

3 (1) For federal Schedule II controlled substances, at least once every three
4 months.

5 (2) For products containing the following substances in the following
6 strengths per tablet, capsule, or other unit, or specified volumes, at least once every
7 12 months:

8 (A) Alprazolam, 1 milligram/unit.

9 (B) Alprazolam, 2 milligrams/unit.

10 (C) Tramadol, 50 milligrams/unit.

11 (D) Promethazine/codeine, 6.25 milligrams of promethazine and 10
12 milligrams of codeine per 5 milliliters of product.

13 (3)(A) For any controlled substance not covered by paragraph (1) or (2), an
14 inventory reconciliation report shall be prepared for identified controlled substances
15 lost no later than three months after discovery of the reportable loss of that controlled
16 substance. This report shall be completed if the loss is discovered either by the
17 inventory activities required by subparagraph (B), or in any other manner. The report
18 shall cover the period from the last physical count of that controlled substance before
19 the loss was discovered through the date of discovery. AT a minimum, a reportable
20 loss is as specified in section 1715.6, or any pattern(s) of loss(es) identified by the
21 pharmacist in charge, as defined by the pharmacy's policies and procedures. A
22 reportable loss shall require an inventory reconciliation report for each pattern of loss
23 identified.

24 (B) Inventory activities for each controlled substance not covered by
25 paragraph (1) or (2) shall be performed at least once every two years from the
26 performance of the last inventory activities. For purposes of this section "inventory
27 activities" means inventory and all other functions sufficient to identify loss of
28 controlled substances. The functions sufficient to identify loss outside of the
inventory reconciliation process shall be identified within the pharmacy's policies
and procedures.

(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 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 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

1 inventory required by this paragraph shall sign and date the inventory or the report
which it is included as provided in subdivision (e)(1);

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

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

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

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

8 (6) Possible causes of overages.

9 **COST RECOVERY**

10 25. Section 125.3 of the Code states, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **DRUG CLASSIFICATIONS**

15 26. Hydrocodone/acetaminophen is a Schedule II Controlled Substance pursuant to
16 Health & Safety Code section 11055, subdivision (b)(1)(I)(ii). “Norco” and “Lortab” are brand
17 names for hydrocodone/acetaminophen, also referred to as hydrocodone/APAP.

18 27. Hydromorphone is a Schedule II Controlled Substance pursuant to Health & Safety
19 Code section 11055, subdivision (b)(1)(J). “Dilaudid” is a brand name for hydromorphone.

20 **FACTS**

21 **Investigation No. 1: February 24, 2022:**

22 28. On or about February 24, 2022, a Board inspector (JF) conducted a routine inspection
23 of Respondent Excel’s premises, which included, but was not limited to a review of Respondent
24 Excel’s policies and procedures, Pharmacy Self-Assessments, and controlled substance
25 inventories and reconciliation reports. That same day, JF was unable to review Respondent
26 Excel’s policies and procedures or pharmacy self-assessments and inventories because
27 Respondent Edema was unable to locate them.

28 ///

29. Upon review of Respondent Excel's active drug stock shelves, JF found over twenty expired prescription medications, including some medications with multiple bottles or boxes of the same expired medication. The expiration dates extended as far back as July 2021, which was the expiration date found for hydrocodone/acetaminophen 7.5/325mg per 15ml oral solution.

30. On or about February 25, 2022, JF returned to Respondent Excel to continue the investigation. He issued an Order of Correction for several items identified as violations of Pharmacy law and regulations. In response to the Order of Correction, Respondent Edema emailed the requested documents and provided a response statement on or about March 11, 2022. JF continued to find deficiencies throughout his investigation, including the repeated failure to complete controlled substance inventory and reconciliation reports.

31. The documents provided by Respondent Edema appeared to indicate there were dispensed prescriptions of hydrocodone/acetaminophen 7.5/325mg per 15ml oral solution after the expiration date listed on the manufacture/stock bottle as follows:

Medication & Strength	NDC	Expiration Date	Last Dispensed per Excel Pharmacy Report	NDC matched: yes/no	Quantity Dispensed
hydrocodone/acetaminophen 7.5/325mg per 15ml oral solution	66689-0023-16	7/2021	11/16/2021; 10/13/2021; 10/8/2021	yes	300ml's 60ml's 60ml's

32. Subsequent documentation provided by Respondent Edema included a previously undisclosed prescription (noted in bold) for hydrocodone/acetaminophen 7.5/325mg per 15ml oral solution with the following information:

Rx #	Patient	Date Dispensed	Quantity Dispensed	Payment
108772	CA	6/25/2021	60ml's	CASH
102982	CA	10/8/2021	60ml's	Insurance
103037	CA	10/13/2021	60ml's	Insurance

103389	AD	11/16/2021	300ml's	Insurance
--------	----	------------	---------	-----------

33. Respondent Edema initially told JF that Rx number 108772 did not exist as a prescription for patient CA, but was run for a price check for the medication. She later provided conflicting information that Rx number 108772 was an actual prescription, but not for patient CA. Respondent Edema also provided conflicting information about when Rx number 102982 was dispensed, with one date showing dispensed as October 13, 2021, the same date as Rx number 103037, so that it did not appear to have been dispensed from expired medication.¹

34. Further investigation showed that Respondent entered Rx number 108772 into the pharmacy database on June 25, 2022, and backdated the "origination date" of the prescription to June 25, 2021. Based on information provided to JF by the mother of patient CA, the reverse pharmacy distributor, and the pharmacy's software company representative, it appeared that Respondent Edema altered Respondent Excel's documentation so that it would no longer show that Rx number 102982 was dispensed from expired medication, and deleted Rx number 108772 within hours of JF concluding his investigation:

Date:	Total Quantity Received from Wholesaler	Rx# Dispensed & Quantity Dispensed	Total Quantity Remaining	Dispensed from Expired Stock? Y/N	Total Quantity Returned to Reverse Distributor
7/10/2020	946ml's				
10/8/2021		102982 for 60 ml's	886ml's	Y	
10/12/2021	946ml's		1,832ml's		
10/13/2021		103037 for 60ml's	1,772ml's	N	
11/16/2021		103389 for 300ml's	1,472ml's	N	
2/25/2022			586ml's		886ml's
6/25/2022 (backdated to 6/25/2021)		108772 for 60ml's	526ml's		

¹¹ The table in paragraph 33 shows that the pharmacy received a new shipment of the expired medication on October 12, 2021, therefore the conflicting documentation showing that both prescriptions were dispensed on October 13 would have shown that neither prescription was dispensed from an expired medication.

1 35. The documentation provided by Respondent Edema did not show that the prescription
2 dispensed from expired Schedule II controlled substance medication on October 8, 2021, was
3 reported to CURES as required.

4 **Investigation No. 2: February 3, 2023:**

5 36. On or about August 22, 2022, the Board received an online complaint from Dr. L,
6 who alleged that a pharmacist from Respondent Excel had dispensed 24 tablets of
7 Hydrocodone/APAP (acetaminophen) 10/325mg on August 19, 2022, under his credentials to one
8 of his patients (SPH) without his authorization. This investigation was assigned to Board
9 inspector LT. On or about August 22, 2022, Dr. L spoke to “Yaya,” whom he believed to be a
10 pharmacist.² “Yaya” told him that SPH came into the pharmacy in severe pain with no
11 medication, and that dispensing the small amount of medication to SPH was the right thing to do.
12 Pursuant to Dr. L’s prescribing directions, that meant that SPH was out of the medication over
13 one week earlier than she should have been.

14 37. SPH was under a pain contract with Dr. L, which limited the amount of
15 Hydrocodone/acetaminophen 10/325mg that she was prescribed, and limited the prescriber to
16 only Dr. L. SPH had agreed not to request that her prescription be refilled early. When Dr. L
17 reviewed CURES, he found that SPH received 24 pills from Respondent Excel on August 19,
18 2022, which had not been ordered by him.

19 38. Dr. L wrote his prescription for SPH as "Hydrocodone-Acetaminophen 10/325mg,
20 #150, Days Supply: 30, 1 PO Q4-6 hours PRN PAIN" which meant that he prescribed 150 tablets
21 of Hydrocodone/acetaminophen 10/325mg to last 30 days at 1 tablet every 4-6 hours as needed
22 for pain, which meant that the patient should take no more than 5 tablets per day. Dr. L provided
23 records of the electronic prescriptions he had sent to Respondent Excel between October 26,
24 2021, and August 22, 2022, which showed the following:

25

Written Date	Drug	Quantity (Days’ Supply)
8/22/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)

26
27

28 ² “Yaya” is a pharmacy clerk at Respondent Excel, not a pharmacist.

1	7/5/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)
2	6/1/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)
3	5/9/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)
4	4/25/2022	Dilaudid (hydromorphone) 4mg	150 (30 day supply)
5	4/5/2022	Dilaudid (hydromorphone) 4mg	150 (30 day supply)
6	3/9/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)
7	2/10/2022	Dilaudid (hydromorphone) 4mg	180 (30 day supply)
8	1/24/2022	Hydrocodone/APAP 10/325mg	150 (30 day supply)
9	12/30/2021	Hydrocodone/APAP 10/325mg	150 (30 day supply)
10	12/14/2021	Hydrocodone/APAP 10/325mg	150 (30 day supply)
11	11/19/2021	Hydrocodone/APAP 10/325mg	150 (30 day supply)
12	10/26/2021	Hydrocodone/APAP 10/325mg	150 (30 day supply)

13
14 All Schedule II Controlled Substances were written with the same direction: 1 tablet every four to
15 six hours as needed for pain.

16 39. LT learned from Dr. L's office staff that on August 19, 2022, Respondent Excel had
17 faxed Dr. L's office a request to refill SPH's prescription for hydrocodone/acetaminophen
18 10/325mg, with a handwritten note that said "The current quantity being dispensed last [sic]
19 patient 25 days. Please consider increasing the dispensed amount to 180; so it will be a FULL 30-
20 day supply." Dr. L's office staff faxed a signed response back to Respondent Excel stating "no,"
21 along with a handwritten note from Dr. L that said "[no,] directions are i q4-6 #150. I meant it. It
22 is a 30 day supply. Do I have to write max 5/day?"

23 40. On or about January 9, 2023, LT spoke with Respondent Edema, and requested
24 documents regarding SPH's medications and the pharmacy's communications with Dr. L. The
25 documents sent by Respondent Edema confirmed that Respondent Excel had filled a prescription
26 for 24 tablets of hydrocodone/acetaminophen 10/325mg for SPH on August 19, 2022, using the
27 same electronic prescription image of the previous prescription Dr. L had prescribed to SPH on
28 July 28, 2022. The pharmacy added a note stating "4 days supply as an emergency fill till [SPH]

1 gets to her appointment to see [Dr. L] 8/19/22.” The prescription was dispensed by DE, which
2 referred to Respondent Edema. Dr. L did not approve the prescription filled by Respondent Excel
3 and dispensed by Respondent Edema on August 19, 2022.

4 41. Although not requested by LT, Respondent Edema offered a statement to justify her
5 action of filling the unauthorized prescription on August 19, 2022. She explained that Dr. L had
6 previously switched SPH to a different narcotic (Dilaudid) and increased the dosage to control her
7 pain because of SPH’s chronic kidney stones. She also said that she was keeping a close watch
8 on SPH, and communicated specifically with Dr. L, and that in her communications with Dr. L,
9 she believed that the prescriptions were for six tablets per day, to last only 25 days. The CURES
10 information reviewed by LT for the medication Respondent Excel dispensed to SPH contradicted
11 Respondent Edema’s statements because it showed that SPH consistently filled her
12 hydrocodone/APAP 10/325mg prescription early, and was actually taking over seven tablets per
13 day instead of the maximum prescribed five tablets per day. LT also discovered evidence that
14 Respondent Edema modified pharmacy documentation after LT had requested that Respondent
15 Edema provide dispensing information for the pharmacy.

16 42. Respondent Edema failed to include the fax communication that Respondent Excel
17 sent to Dr. L (requesting an emergency fill of a controlled substance) on August 19, 2022, or Dr.
18 L’s response (denying the request) to the pharmacy in the documentation she provided to LT.

19 43. Respondent Edema continued to provide LT with contradicting and conflicting
20 statements to justify her providing an unauthorized refill of hydrocodone/APAP 10/325mg to
21 SPH. Respondent Edema’s statements included that SPH had lost medication, which contradicted
22 her initial statement that SPH had run out of medication and would be in intense pain without an
23 emergency fill. Respondent Edema also stated that she immediately contacted Dr. L’s office on
24 August 22, 2022, to notify him of the emergency fill. The pharmacy documentation failed to
25 support Respondent Edema’s statement, and contradicted the evidence provided by Dr. L’s office.

26 44. Respondent Edema failed to provide evidence that Dr. L had verbally authorized an
27 emergency refill of hydrocodone/APAP 10/325mg for SPH. She also failed to provide evidence
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1 that Dr. L's prescriptions for hydrocodone/APAP 10/325mg were actually for 25 days instead of
2 30.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Holding Expired and Adulterated Medications)**

5 45. Respondent Excel and Respondent Edema are subject to disciplinary action under
6 Code section 4301, subdivisions (j) and (o) for violating Health and Safety Code sections 111250,
7 111255, and 111295, in conjunction with section 4342, subdivision (a), in that at the time of a
8 routine pharmacy inspection, Respondent Excel, with Respondent Edema as the PIC, held over
9 twenty containers of expired medications in its active drug stock, as referenced in paragraph 29
10 above, and incorporated here by reference.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Prohibited Acts, Dispensing of Expired Medications)**

13 46. Respondent Excel and Respondent Edema are subject to disciplinary action under
14 Code section 4301, subdivisions (j) and (o), for violating Code section 4169, subdivision (a)(2)
15 and (4), in that PIC Respondent Edema dispensed a Schedule II Controlled Substance prescription
16 from expired medication, as referenced in paragraphs 29, 31-34 above, and incorporated here by
17 reference.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Complete a Controlled Substance Inventory)**

20 47. Respondent Excel and Respondent Edema are subject to disciplinary action under
21 Code section 4301, subdivisions (j) and (o), for violating Code section 4156, by and through CFR
22 section 1304.11, subdivisions (a) – (c), in that Respondent Edema failed to conduct any controlled
23 substance inventory as referenced in paragraph 28 and 30 above, and incorporated here by
24 reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Conduct Required Quarterly Schedule II Controlled Substance Inventory**
3 **Reconciliation)**

4 48. Respondent Excel and Respondent Edema are subject to disciplinary action under
5 Code section 4301, subdivisions (j) and (o), for violating CCR section 1715.65 for unprofessional
6 conduct, in that Respondent Edema failed to conduct required quarterly Schedule II Controlled
7 Substance Inventory Reconciliations, as referenced in paragraphs 28 and 30 above, and
8 incorporated here by reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Failure to Transmit a Controlled Substance Prescription to CURES)**

11 49. Respondent Excel and Respondent Edema are subject to disciplinary action under
12 Code section 4301, subdivisions (j) and (o), for violating Health and Safety Code section 11165,
13 subdivision (d), and Respondent Edema is also subject to disciplinary action under Code section
14 4113, subdivision (c), in that Respondent Excel's PIC Respondent Edema failed to transmit
15 prescription information to CURES after dispensing a Schedule II controlled substance on
16 October 8, 2021, as referenced in paragraph 35 above, and incorporated here be reference.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

19 50. Respondent Edema is subject to disciplinary action for unprofessional conduct under
20 Code section 4301, subdivision (f), in that she committed acts involving moral turpitude,
21 dishonesty, fraud, deceit, or corruption when she maintained expired medication in Respondent
22 Excel's active drug stock, falsely altered prescription documents and records, failed to accurately
23 report prescription information to CURES, provided conflicting information to the Board,
24 potentially withheld fax evidence, and modified a patient note, as referenced in paragraphs 28-44
25 above, and incorporated here by reference.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Knowingly Making or Signing False Documents)**

3 51. Respondent Edema is subject to disciplinary action for unprofessional conduct under
4 Code section 4301, subdivision (g), in that she knowingly made or signed any certificate or other
5 document that falsely represents the existence or nonexistence of a state of facts when she falsely
6 altered prescription documents and records, as referenced in paragraphs 28-35 above, and
7 incorporated here by reference.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Conduct that Subverts an Investigation of the Board)**

10 52. Respondent Edema is subject to disciplinary action for unprofessional conduct under
11 Code section 4301, subdivision (q), in that she engaged in conduct that subverts or attempts to
12 subvert investigations of the Board, when she falsely altered prescription documents and records,
13 and provided incomplete, untruthful, or contradictory information to Board Inspectors, as
14 referenced in paragraphs 28-44 above, and incorporated here by reference.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Unauthorized Prescription)**

17 53. Respondent Excel is subject to disciplinary action for unprofessional conduct under
18 Code sections 4301, subdivisions (j) and (o), 4156, and Health and Safety Code sections 11150
19 and 11200, in that Respondent Edema issued and dispensed a prescription for a Schedule II
20 controlled substance without receiving the prescriber's authorization, as referenced in paragraphs
21 36-44 above, and incorporated here by reference.

22 **TENTH CAUSE FOR DISCIPLINE**

23 **(Excessive Furnishing of a Controlled Substance)**

24 54. Respondent Excel and Respondent Edema are subject to disciplinary action under
25 Code section 4301, subdivision (d), for unprofessional conduct, in that Respondent Excel's PIC,
26 Respondent Edema dispensed approximately 750 tablets of hydrocodone/APAP 10/325mg to
27 SPH between May 9, 2022, and July 28, 2022, averaging over 7 tablets per day, exceeding the 5
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1 tablets per day instruction from Dr. L, and dispensed an additional 24 unauthorized tablets on
2 August 19, 2022, as referenced in paragraphs 36-44 above, and incorporated here by reference.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Excessive Furnishing of a Controlled Substance)**

5 55. Respondent Edema is subject to disciplinary action under Code section 4306.5 for
6 unprofessional conduct, in that she dispensed approximately 750 tablets of hydrocodone/APAP
7 10/325mg to SPH between May 9, 2022, and July 28, 2022, averaging over 7 tablets per day,
8 exceeding the 5 tablets per day instruction from Dr. L, and issued and dispensed an additional 24
9 unauthorized tablets on August 19, 2022, as referenced in paragraphs 36-44 above, and
10 incorporated here by reference

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 56. Respondent Excel is subject to disciplinary action under Code section 4301,
14 subdivisions (f), (j), and (q), for unprofessional conduct, in that owner and PIC Respondent
15 Edema acted dishonestly during a Board investigation by providing conflicting information to the
16 Board, potentially withholding fax evidence, and modifying a patient note, as referenced in
17 paragraphs 36-44 above, and incorporated here by reference.

18 **THIRTEENTH CAUSE FOR DISCIPLINE**

19 **(Maintenance of Records)**

20 57. Respondent Excel is subject to disciplinary action under Code section 4301,
21 subdivisions (j) and (o), for violating Code section 4105, subdivisions (a), (c), and (f), in that
22 during a pharmacy investigation of its records, Respondent Excel failed to maintain a successfully
23 transmitted fax prescription record related to the disposition of an unauthorized emergency fill
24 prescription, or failed to provide such a record to the Board, as referenced in paragraphs 36-44
25 above, and incorporated here by reference.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Unauthorized Prescription)**

3 58. Respondent Edema is subject to disciplinary action for unprofessional conduct under
4 Code section 4301, subdivisions (j) and (o), for violating Code section 4306.5 and Health and
5 Safety Code sections 11150 and 11200, in that she issued and dispensed a prescription for a
6 Schedule II controlled substance without receiving the prescriber's authorization, as referenced in
7 paragraphs 36-44 above, and incorporated here by reference.

8 **FIFTEENTH CAUSE FOR DISCIPLINE**

9 **(Maintenance of Records)**

10 59. Respondent Edema is subject to disciplinary action under Code section 4301,
11 subdivisions (j) and (o), for violating Code section 4105, subdivisions (a), (c), and (f), in that
12 during a pharmacy investigation of its records, as owner and PIC of Respondent Excel, she failed
13 to maintain a successfully transmitted fax prescription record related to the disposition of an
14 unauthorized emergency fill prescription, or failed to provide such a record to the Board, as
15 referenced in paragraphs 36-44 above, and incorporated here by reference.

16 **OTHER MATTERS**

17 60. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
18 PHY 57135 issued to Excel Specialty Pharmacy LLC doing business as Excel Specialty
19 Pharmacy LLC, it shall be prohibited from serving as a manager, administrator, owner, member,
20 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
21 PHY 57135 is placed on probation or until Pharmacy Permit Number PHY 57135 is reinstated if
22 it is revoked.

23 61. Pursuant to Code section 4307, is discipline is imposed on Pharmacy Permit Number
24 PHY 57135 issued to Excel Specialty Pharmacy LLC doing business as Excel Specialty
25 Pharmacy LLS while Adelola Olufunmilayo Edema has been a member, shareholder, officer,
26 director, or manager and had knowledge of or knowingly participated in any conduct for which
27 the licensee was disciplined, Adelola Olufunmilayo Edema shall be prohibited from serving as a
28 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for

1 five years if Pharmacy Permit Number PHY 57135 is placed on probation or until Pharmacy
2 Permit Number PHY 57135 is reinstated if it is revoked.

3 62. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
4 Number RPH 63688 issued to Adelola Olufunmilayo Edema, Adelola Olufunmilayo Edema shall
5 be prohibited from serving as a manager, administrator, owner, member, officer, director,
6 associate, or partner of a licensee for five years if Pharmacist License Number RPH 63688 is
7 placed on probation or until Pharmacist License Number RPH 63688 is reinstated if it is revoked.

8 **PRAYER**

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

11 1. Revoking or suspending Pharmacy Permit Number PHY 57135, issued to Excel
12 Specialty Pharmacy LLC, doing business as Excel Specialty Pharmacy LLC;

13 2. Revoking or suspending Pharmacist License Number RPH 63688, issued to Adeola
14 Olufunmilayo Edema;

15 3. Prohibiting Excel Specialty Pharmacy LLC, doing business as Excel Specialty
16 Pharmacy LLC from serving as a manager, administrator, owner, member, officer, director,
17 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 57135 is placed
18 on probation or until Pharmacy Permit Number PHY 57135 is reinstated if Pharmacy Permit
19 Number 57135 issued to Excel Specialty Pharmacy LLC, doing business as Excel Specialty
20 Pharmacy LLC is revoked;

21 4. Prohibiting Adelola Olufunmilayo Edema from serving as a manager, administrator,
22 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
23 Permit Number PHY 57135 is placed on probation or until Pharmacy Permit Number PHY 57135
24 is reinstated if Pharmacy Permit Number 57135 issued to Excel Specialty Pharmacy LLC, doing
25 business as Excel Specialty Pharmacy LLC is revoked;

26 5. Prohibiting Adelola Olufunmilayo Edema from serving as a manager, administrator,
27 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist
28 Number RPH 63688 is placed on probation or until Pharmacist License Number RPH 63688 is

1 reinstated if Pharmacist License Number RPH 63688 issued to Adelola Olufunmilayo Edema is
2 revoked;

3 6. Ordering Excel Specialty Pharmacy LLC and Adeola Olufunmilayo Edema to pay the
4 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
5 pursuant to Business and Professions Code section 125.3; and,

6 7. Taking such other and further action as deemed necessary and proper.
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10 DATED: 9/7/2023

Sodergren,
Anne@DCA
ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

Digitally signed by Sodergren,
Anne@DCA
Date: 2023.09.07 19:54:52 -07'00'

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