

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

In the Matter of the Accusation Against:

**GARFIELD BEACH CVS, LLC, DBA CVS PHARMACY #09858,
Pharmacy Permit No. PHY 49676**

Agency Case No. 6919

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on March 26, 2021.

It is so ORDERED on February 24, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 ELAINE YAN
Deputy Attorney General
4 State Bar No. 277961
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6683
6 Facsimile: (916) 731-2126
E-mail: Elaine.Yan@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **LONGS DRUG STORES CALIFORNIA,**
14 **LLC, DBA CVS PHARMACY #09858**
25880 McBean Pkwy.
15 Santa Clarita, CA 91355

16 Pharmacy Permit No. PHY 49676

17 Respondent.

Case No. 6919

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL**

[Bus. & Prof. Code § 495]

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Elaine Yan, Deputy Attorney
25 General.

26 2. Respondent Longs Drug Stores California, LLC, dba CVS Pharmacy #09858
27 (Respondent) is represented in this proceeding by attorney Jeff J. Astarabadi, whose address is:
28 Much Shelist, P.C., 660 Newport Center Drive, Suite 900, Newport Beach, CA 92660.

1 **JURISDICTION**

2 3. On or about November 10, 2008, the Board issued Pharmacy Permit No. PHY 49676
3 to Respondent. The Pharmacy Permit was in full force and effect at all times relevant to the
4 charges brought in Accusation No. 6919 and will expire on November 1, 2021, unless renewed.

5 4. Accusation No. 6919 was filed before the Board of Pharmacy (Board), Department of
6 Consumer Affairs and is currently pending against Respondent. The Accusation and all other
7 statutorily required documents were properly served on Respondent on June 15, 2020.
8 Respondent filed its Notice of Defense contesting the Accusation. A copy of Accusation No.
9 6919 is attached as exhibit A and incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 6919. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order for Public Repeval.

15 6. Respondent is fully aware of its legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 its own expense; the right to confront and cross-examine the witnesses against them; the right to
18 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

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

24 **CULPABILITY**

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 6919.

27 9. Respondent agrees that its Pharmacy Permit is subject to discipline and they agree to
28 be bound by the Disciplinary Order below.

CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and settlement, without notice to
5 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
6 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
7 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
8 Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Repeval shall
9 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
10 between the parties, and the Board shall not be disqualified from further action by having
11 considered this matter.

12 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
13 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including PDF
14 and facsimile signatures thereto, shall have the same force and effect as the originals.

15 12. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
16 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
17 of their agreement. It supersedes any and all prior or contemporaneous agreements,
18 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
19 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
20 supplemented, or otherwise changed except by a writing executed by an authorized representative
21 of each of the parties.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:

25 ///

26 ///

27 ///

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 49676 issued to Respondent
3 Longs Drug Stores California, LLC, dba CVS Pharmacy #09858 (Respondent) shall be publicly
4 reproved by the Board of Pharmacy under Business and Professions Code section 495 in
5 resolution of Accusation No. 6919, attached as exhibit A.

6 **Cost Recovery.** No later than 6 months from the effective date of the Decision,
7 Respondent shall pay \$7,500 to the Board for its costs associated with the investigation and
8 enforcement of this matter pursuant to Business and Professions Code Section 125.3. If
9 Respondent fails to pay the Board costs as ordered, Respondent shall not be allowed to renew
10 their Pharmacy Permit until Respondent pays costs in full. In addition, the Board may enforce
11 this order for payment of its costs in any appropriate court, in addition to any other rights the
12 Board may have.

13 **Full Compliance.** As a resolution of the charges in Accusation No. 6919, this stipulated
14 settlement is contingent upon Respondent’s full compliance with all conditions of this Order. If
15 Respondent fails to satisfy any of these conditions, such failure to comply constitutes cause for
16 discipline, including outright revocation, of Respondent’s Pharmacy Permit No. PHY 49676.

17 **Record of Discipline.** This Decision and Order constitutes a record of discipline and shall
18 become a part of Respondent’s license history with the Board.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and have fully discussed it with my attorney, Jeff J. Astarabadi. I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____
LEO LARIVIERE
DIRECTOR OF REGULATORY AFFAIRS
LONGS DRUG STORES CALIFORNIA, LLC,
DBA CVS PHARMACY #09858
Respondent

I have read and fully discussed with Respondent Longs Drug Stores California, LLC, dba CVS Pharmacy #09858 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

DATED: _____
JEFF J. ASTARABADI
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: _____
Respectfully submitted,
XAVIER BECERRA
Attorney General of California
SHAWN P. COOK
Supervising Deputy Attorney General

ELAINE YAN
Deputy Attorney General
Attorneys for Complainant

1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
3 Repeval and have fully discussed it with my attorney, Jeff J. Astarabadi. I understand the
4 stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated
5 Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently,
6 and agree to be bound by the Decision and Order of the Board of Pharmacy.

7
8 DATED: 01/29/21


9 LEO LARIVIERE
10 DIRECTOR OF REGULATORY AFFAIRS
11 LONGS DRUG STORES CALIFORNIA, LLC,
12 DBA CVS PHARMACY #09858
13 Respondent

14 I have read and fully discussed with Respondent Longs Drug Stores California, LLC, dba
15 CVS Pharmacy #09858 the terms and conditions and other matters contained in the above
16 Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

17 DATED: 2/1/21


18 JEFF J. ASTARABADI
19 Attorney for Respondent

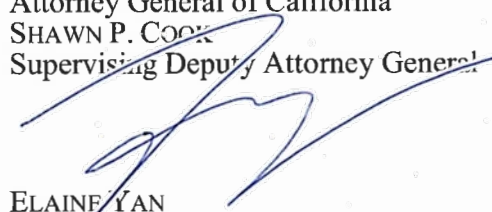
20 **ENDORSEMENT**

21 The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby
22 respectfully submitted for consideration by the Board of Pharmacy of the Department of
23 Consumer Affairs.

24 DATED: 02/01/2021

25 Respectfully submitted,

26 XAVIER BECERRA
27 Attorney General of California
28 SHAWN P. COOK
Supervising Deputy Attorney General


ELAINE YAN
Deputy Attorney General
Attorneys for Complainant

LA2020501326/63929181.docx

Exhibit A

Accusation No. 6919

1 XAVIER BECERRA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 ELAINE YAN
Deputy Attorney General
4 State Bar No. 277961
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6683
6 Facsimile: (916) 731-2126
E-mail: Elaine.Yan@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6919

13 **LONGS DRUG STORES CALIFORNIA,**
14 **LLC, DBA CVS PHARMACY #09858**
15 **25880 McBean Pkwy.**
Santa Clarita, CA 91355

ACCUSATION

16 **Pharmacy Permit No. PHY 49676**

17 Respondent.

18
19
20 **PARTIES**

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

23 2. On or about November 10, 2008, the Board of Pharmacy issued Pharmacy Permit
24 Number PHY 49676 to Longs Drug Stores California, LLC, dba CVS Pharmacy #09858
25 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 1, 2020, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300.1 of the Code states, “The expiration, cancellation, forfeiture, or
10 suspension of a board-issued license by operation of law or by order or decision of the board or a
11 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
12 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
13 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
14 suspending or revoking the license.”

15 6. Section 4307, subsection (a), of the Code states:

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

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

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

1 **STATUTORY PROVISIONS**

2 7. Section 4301, states, “The board shall take action against any holder of a license who
3 is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional
4 conduct includes, but is not limited to, any of the following:

5 ...

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

10 **REGULATORY PROVISIONS**

11 8. California Code of Regulations, title 16, section 1707.2, states:

12 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in
13 all care settings:

14 (1) upon request; or

15 (2) whenever the pharmacist deems it warranted in the exercise of his or her
16 professional judgment.

17 (b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall
18 provide oral consultation to his or her patient or the patient's agent in any care setting in which the
19 patient or agent is present:

20 (A) whenever the prescription drug has not previously been dispensed to a patient; or

21 (B) whenever a prescription drug not previously dispensed to a patient in the same
22 dosage form, strength or with the same written directions, is dispensed by the pharmacy.

23 (2) When the patient or agent is not present (including but not limited to a prescription drug
24 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice:

25 (A) of his or her right to request consultation; and

26 (B) a telephone number from which the patient may obtain oral consultation from a
27 pharmacist who has ready access to the patient's record.

28 ///

1 (3) A pharmacist is not required by this subsection to provide oral consultation to an
2 inpatient of a health care facility licensed pursuant to section 1250 of the Health and Safety Code,
3 or to an inmate of an adult correctional facility or a juvenile detention facility, except upon the
4 patient's discharge. A pharmacist is not obligated to consult about discharge medications if a
5 health facility licensed pursuant to subdivision (a) or (b) of Health and Safety Code Section 1250
6 has implemented a written policy about discharge medications which meets the requirements of
7 Business and Professions Code Section 4074.

8 (c) When oral consultation is provided, it shall include at least the following:

9 (1) directions for use and storage and the importance of compliance with directions; and

10 (2) precautions and relevant warnings, including common severe side or adverse effects or
11 interactions that may be encountered.

12 (d) Whenever a pharmacist deems it warranted in the exercise of his or her professional
13 judgment, oral consultation shall also include:

14 (1) the name and description of the medication;

15 (2) the route of administration, dosage form, dosage, and duration of drug therapy;

16 (3) any special directions for use and storage;

17 (4) precautions for preparation and administration by the patient, including techniques for
18 self-monitoring drug therapy;

19 (5) prescription refill information;

20 (6) therapeutic contraindications, avoidance of common severe side or adverse effects or
21 known interactions, including serious potential interactions with known nonprescription
22 medications and therapeutic contraindications and the action required if such side or adverse
23 effects or interactions or therapeutic contraindications are present or occur;

24 (7) action to be taken in the event of a missed dose.

25 (e) Notwithstanding the requirements set forth in subsection (a) and (b), a pharmacist is not
26 required to provide oral consultation when a patient or the patient's agent refuses such
27 consultation.

28 ///

1 **COST RECOVERY**

2 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation of the licensing
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

5 **FACTUAL ALLEGATIONS**

6 10. On February 22, 2019, a Board inspector conducted an inspection of Respondent’s
7 Pharmacy located at 25880 McBean Parkway, Santa Clarita, CA 91355. Prior to entering the
8 pharmacy, the inspector observed the pharmacy’s consultation practices for more than 20 minutes
9 (Observation Time Period).

10 11. The inspector observed five individuals picking up prescriptions during the
11 Observation Time Period, and none of these individuals received a consultation from a
12 pharmacist.

13 12. Upon entering the pharmacy, the inspector reviewed the records for the prescriptions
14 picked up during the Observation Time Period. All five individuals picked up new prescriptions
15 or new dosages of existing prescriptions.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Failure to Provide Consultations)

18 13. Respondent is subject to disciplinary action under Section 4301, subsection (o), in
19 that Respondent failed to comply with California Code of Regulations, title 16, section 1707.2,
20 subsection (a)(1)(A), in that Respondent’s pharmacists failed to provide oral consultation to their
21 patients or their patients’ agents when the prescription drug had not previously been dispensed to
22 the patients.

23 **DISCIPLINARY CONSIDERATIONS**

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

26 ///

27 ///

28 ///

1 a. In or about 2011, the District Attorney’s Offices in Riverside, San Diego, and
2 Alameda counties together conducted an undercover investigation of the consultation practices of
3 a number of the major pharmacy chains in California. Subsequently, the Consumer Fraud Unit of
4 the Riverside County District Attorney’s Office filed a civil complaint in San Diego Superior
5 Court against Respondent, which owns multiple CVS-branded pharmacies in California. The
6 complaint alleged Respondent’s frequent failure to comply with the Board’s rules requiring
7 personal pharmacist consultations when customers receive new prescriptions or new dosages of
8 existing prescriptions. On December 20, 2013, the Court entered judgment in this civil matter,
9 which permanently enjoined CVS to comply with California’s standards for patient consultations
10 and must fully implement an internal compliance program that CVS began once it learned of
11 prosecutors’ concerns. Respondent’s misconduct alleged herein directly violates the terms of the
12 judgment.

13 b. On or about June 25, 2015, the Board issued Citation No. CI 2013 60218 to
14 Respondent for violation of California Rules of Regulations, title 16, section 1714, subsection (b),
15 which states each pharmacy shall maintain its facilities, space, fixtures, and equipment so that
16 drugs are safely and properly prepared, maintained, secured, and distributed. An audit conducted
17 from May 2, 2013 to December 19, 2013 at Respondent’s pharmacy revealed an unexplained loss
18 of 849 tablets of alprazolam 0.5 mg.

19 c. On or about April 25, 2017, the Board issued Citation No. CI 2015 68879 to
20 Respondent for violation of California Rules of Regulations, title 16, section 1716, which requires
21 that a pharmacist shall not deviate from the requirements of a prescription except upon the prior
22 consent of the prescriber. On or about December 7, 2015, Respondent’s pharmacy dispensed
23 prescription number RX #728096 – zolpidem 5mg with the directions to take three tablets orally
24 at bedtime as needed instead of the prescribed take one tablet at bedtime as needed. The patient
25 ingested the incorrect dosage and suffered adverse effects due to the medication error.

26 d. On or about April 6, 2018, the Board issued Citation No. CI 2016 74967 to
27 Respondent for violation of California Rules of Regulations, title 16, section 1714, subsection (c),
28 which states the pharmacy and fixtures and equipment shall be maintained in a clean and orderly


1 condition. The pharmacy shall be equipped with a sink with hot and cold running water for
2 pharmaceutical purposes. On or about June 9, 2017, an inspection of Respondent's pharmacy
3 revealed rust and hard water residues on pharmacy sinks and dusty pharmacy shelves. The Board
4 issued a fine in the amount of \$500.00.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Permit Number PHY 49676, issued to Longs Drug
9 Stores California, LLC, dba CVS Pharmacy #09858;
- 10 2. Ordering CVS Pharmacy #09858 to pay the Board of Pharmacy the reasonable costs
11 of the investigation and enforcement of this case, pursuant to Business and Professions Code
12 section 125.3; and,
- 13 3. Taking such other and further action as deemed necessary and proper.

14
15
16 DATED: May 29, 2020



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

17
18
19
20
21
22 LA2020501326
63284163.docx