

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

In the Matter of the Accusation Against:

**RITE AID CORPORATION dba
RITE AID 5770,
Pharmacy Permit No. PHY 42426;**

and

**ROSEMARY HYUN JU KIM,
Pharmacy Technician Registration No. TCH 75505;**

and

**TRACY DIEUTHAO CHE-QUACH,
Pharmacist License No. RPH 42661,**

Respondents

Agency Case No. 7079

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 December 22, 2021.

It is so ORDERED on November 22, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
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Attorneys for Complainant
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:

14 **RITE AID CORPORATION,**
15 **DBA RITE AID 5770**
16 **5560 East Santa Ana Canyon Road**
Anaheim, CA 92807
Pharmacy Permit No. PHY 42426,

17 **ROSEMARY HYUN JU KIM**
18 **7825 E. Rainview Ct.**
Anaheim, CA 92808
19 **Pharmacy Technician Registration No. TCH**
75505,

20 **and**

21 **TRACY DIEUTHAO CHE-QUACH**
22 **8658 E. Silver Ridge**
Anaheim, CA 92808
23 **Pharmacist License No. RPH 42661**

24 Respondents.

Case No. 7079

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL AS TO RESPONDENT
RITE AID CORPORATION, DBA RITE
AID 5770 ONLY

[Bus. & Prof. Code § 495]

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:

28 ///

1 **PARTIES**

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

6 2. Respondent Rite Aid Corporation, dba Rite Aid 5770 (Respondent Rite Aid) is
7 represented in this proceeding by attorney Sweta H. Patel whose address is 1981 North
8 Broadway, Suite 220, Walnut Creek, CA 94596-3877.

9 **JURISDICTION**

10 3. On or about February 21, 1997, the Board issued Pharmacy Permit No. PHY 42426 to
11 Respondent Rite Aid. The Pharmacy Permit was in full force and effect at all times relevant to
12 the charges brought in Accusation No. 7079 and will expire on April 1, 2021, unless renewed.

13 4. Accusation No. 7079 was filed before the Board and is currently pending against
14 Respondent Rite Aid. The Accusation and all other statutorily required documents were properly
15 served on Respondent Rite Aid on April 16, 2021. Respondent Rite Aid timely filed its Notice of
16 Defense contesting the Accusation. A copy of Accusation No. 7079 is attached as Exhibit A and
17 incorporated herein by reference.

18 **ADVISEMENT AND WAIVERS**

19 5. Respondent Rite Aid has carefully read, fully discussed with counsel, and
20 understands the charges and allegations in Accusation No. 7079. Respondent Rite Aid has also
21 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
22 Settlement and Disciplinary Order for Public Repeval.

23 6. Respondent Rite Aid is fully aware of its legal rights in this matter, including the right
24 to a hearing on the charges and allegations in the Accusation; the right to confront and cross-
25 examine the witnesses against them; the right to present evidence and to testify on its own behalf;
26 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
27 documents; the right to reconsideration and court review of an adverse decision; and all other
28 rights accorded by the California Administrative Procedure Act and other applicable laws.

1 7. Respondent Rite Aid voluntarily, knowingly, and intelligently waives and gives up
2 each and every right set forth above.

3 **CULPABILITY**

4 8. Respondent Rite Aid understands and agrees that the charges and allegations in
5 Accusation No. 7079, if proven at a hearing, constitute cause for imposing discipline upon its
6 Pharmacy Permit

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

11 10. Respondent Rite Aid agrees that its Pharmacy Permit is subject to discipline and they
12 agree to be bound by the Disciplinary Order below.

13 **RESERVATION**

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

18 **CONTINGENCY**

19 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
20 Rite Aid understands and agrees that counsel for Complainant and the staff of the Board of
21 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
22 without notice to or participation by Respondent or its counsel. By signing the stipulation,
23 Respondent Rite Aid understands and agrees that they may not withdraw its agreement or seek to
24 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
25 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
26 for Public Repeval shall be of no force or effect, except for this paragraph, it shall be
27 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
28 further action by having considered this matter.

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

4 14. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
5 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
6 of their agreement. It supersedes any and all prior or contemporaneous agreements,
7 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
8 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
9 supplemented, or otherwise changed except by a writing executed by an authorized representative
10 of each of the parties.

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

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 42426 issued to Respondent
16 Rite Aid Corporation, dba Rite Aid 5770 (Respondent Rite Aid) shall be publicly reprovved by the
17 Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation
18 No. 7079, attached as Exhibit A.

19 **Cost Recovery.** No later than sixty days from the effective date of the Decision,
20 Respondent Rite Aid shall pay \$13,500.00 to the Board for its costs associated with the
21 investigation and enforcement of this matter pursuant to Business and Professions Code Section
22 125.3. If Respondent Rite Aid fails to pay the Board costs as ordered, Respondent Rite Aid shall
23 not be allowed to renew their Pharmacy Permit until Respondent pays costs in full. In addition,
24 the Board may enforce this order for payment of its costs in any appropriate court, in addition to
25 any other rights the Board may have.

26 **Full Compliance.** As a resolution of the charges in Accusation No. 7079, this stipulated
27 settlement is contingent upon Respondent Rite Aid's full compliance with all conditions of this
28 Order. If Respondent Rite Aid fails to satisfy any of these conditions, such failure to comply

1 constitutes cause for discipline, including outright revocation, of Respondent Rite Aid's
2 Pharmacy Permit No. PHY 42426.

3 **ACCEPTANCE**

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

9
10 DATED: _____
11 On behalf of RITE AID CORPORATION,
12 DBA RITE AID 5770, *Respondent*

13 I have read and fully discussed with Respondent Rite Aid Corporation, dba Rite Aid 5770
14 the terms and conditions and other matters contained in the above Stipulated Settlement and
15 Disciplinary Order for Public Repeval. I approve its form and content.

16
17 DATED: _____
18 Sweta H. Patel
19 *Attorney for Respondent*

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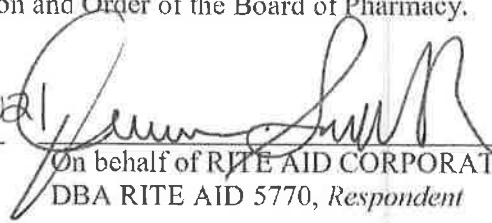
1 constitutes cause for discipline, including outright revocation, of Respondent Rite Aid's
2 Pharmacy Permit No. PHY 42426.

3 ACCEPTANCE

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

9
10 DATED:

9/21/2021


On behalf of RITE AID CORPORATION,
DBA RITE AID 5770, Respondent

11
12
13 I have read and fully discussed with Respondent Rite Aid Corporation, dba Rite Aid 5770
14 the terms and conditions and other matters contained in the above Stipulated Settlement and
15 Disciplinary Order for Public Repeval. I approve its form and content.

16
17 DATED:

9/21/2021



Sweta H. Patel
Attorney for Respondent

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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,
ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

DIONNE MOCHON
Deputy Attorney General
Attorneys for Complainant

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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: September 21, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC



DIONNE MOCHON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7079

1 MATTHEW RODRIQUEZ
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2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
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E-mail: Dionne.Mochon@doj.ca.gov
8 *Attorneys for Complainant*

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

12
13
14 In the Matter of the Accusation Against:

Case No. 7079

15 **RITE AID CORPORATION**
DBA RITE AID 5770
16 **5560 East Santa Ana Canyon Road**
Anaheim, CA 92807

ACCUSATION

17 **Pharmacy Permit No. PHY 42426,**

18 **ROSEMARY HYUN JU KIM**
19 **7825 E. Rainview Ct.**
Anaheim, CA 92808

20 **Pharmacy Technician Registration No. TCH**
21 **75505,**

22 **and**

23 **TRACY DIEUTHAO CHE-QUACH**
24 **8658 E. Silver Ridge**
Anaheim, CA 92808

25 **Pharmacist License No. RPH 42661**

26 Respondents.

1 **PARTIES**

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

4 2. On or about February 21, 1997, the Board issued Pharmacy Permit Number PHY
5 42426 to Rite Aid Corporation, dba Rite Aid 5770 (Respondent Rite Aid). The Pharmacy Permit
6 was in full force and effect at all times relevant to the charges brought herein and will expire on
7 April 1, 2022, unless renewed.

8 3. On or about May 10, 2007, the Board issued Pharmacy Technician Registration
9 Number TCH 75505 to Rosemary Hyun Ju Kim (Respondent Kim). The Pharmacy Technician
10 Registration was in full force and effect at all times relevant to the charges brought herein and
11 will expire on July 31, 2022, unless renewed.

12 4. On or about August 8, 1989, the Board issued Pharmacist License Number RPH
13 42661 to Tracy Dieuthao Che-Quach (Respondent Che-Quach). The Pharmacist License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on October
15 31, 2022, unless renewed.

16 **JURISDICTION**

17 5. This Accusation is brought before the Board under the authority of the following
18 laws. All section references are to the Business and Professions Code unless otherwise stated.

19 6. Code section 4300 states, in pertinent part:

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

21 . . .

22 7. Code section 4300.1 states:

23 The expiration, cancellation, forfeiture, or suspension of a board-issued license
24 by operation of law or by order or decision of the board or a court of law, the
25 placement of a license on a retired status, or the voluntary surrender of a license by a
26 licensee shall not deprive the board of jurisdiction to commence or proceed with any
27 investigation of, or action or disciplinary proceeding against, the licensee or to render
28 a decision suspending or revoking the license.

STATUTORY PROVISIONS

8. 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.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Section 4081 of the Code states in part:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section 4187, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

6

7 11. Section 4301 states, in pertinent part:

8 The board shall take action against any holder of a license who is guilty of
9 unprofessional conduct or whose license has been issued by mistake. Unprofessional
10 conduct shall include, but is not limited to, any of the following:

11

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

15

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

18

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

24 12. Section 4307 states, in pertinent part

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

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

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

. . .

1 19. California Code of Regulations, title 16, section 1718, states

2 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

5 The controlled substances inventories required by Title 21, CFR, Section 1304
6 shall be available for inspection upon request for at least 3 years after the date of the
7 inventory.

8 **COST RECOVERY**

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

13 **DRUG CLASSIFICATIONS/DEFINITIONS**

14 21. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
15 section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

16 Alprazolam is used to treat anxiety. "Xanax" is the brand name for alprazolam.

17 22. Phenergan with codeine is the brand name for promethazine with codeine, a Schedule
18 V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and a dangerous
19 drug pursuant to Business and Professions Code section 4022.

20 23. DEA Form 106 is a form used by pharmacies to report controlled substance losses to
21 the Drug Enforcement Agency (DEA) and the Board.

22 24. Positive variance indicates a shortage (purchases/acquisitions greater than
23 sales/disposition) of on-hand stock. A negative variance indicates an overage (sold more than
24 purchased).

25 **FACTUAL ALLEGATIONS**

26 25. At all times relevant herein, Respondent Kim was employed as a pharmacy technician
27 for Respondent Rite Aid and Respondent Che-Quach was employed as the Pharmacist in Charge
28 (PIC) for Respondent Rite Aid. On or around August 21, 2020, the Board received notification
from Respondent Rite Aid's Regional Manager JB that Respondent Rite Aid terminated
Respondent Kim due to an admission of diversion of controlled substances. Respondent Rite Aid

1 referred the theft of Phenergan with codeine to the Anaheim Police Department. The Board
2 initiated an investigation and found the following.

3 **Respondent Kim**

4 26. On or about July 30, 2020, Respondent Rite Aid initiated an investigation because of
5 information generated from high cycle counts on promethazine with codeine syrup. Specifically,
6 over a period of five weeks, seven bottles of promethazine with codeine were missing from
7 inventory with no justification or record of dispensing prescriptions or sales. The item continued
8 to be ordered weekly by telephone. As part of the internal investigation, Respondent Rite Aid
9 pulled time cards, telestock, store phone records, and store video. After reviewing the telestock
10 system, Respondent Kim's time records, and store security video, Respondent Rite Aid verified
11 that Respondent Kim placed the orders for promethazine with codeine by telephone. On or
12 around August 12, 2020, Respondent Rite Aid completed a second controlled count with
13 additional losses of promethazine with codeine. Respondent Rite Aid installed a covert camera
14 focused on the aisle where the promethazine with codeine was stored.

15 27. Respondent Rite Aid reviewed video for the period August 11, 2020 through August
16 12, 2020. The video showed that on August 11, 2020, Respondent Kim grabbed an empty staging
17 bottle used to fill liquid medication from a workbench. Respondent Kim placed the bottle in a
18 small basket used to stage filled prescriptions. Shortly thereafter, Respondent Kim returned to the
19 aisle, opened two promethazine with codeine bottles, and poured from each bottle into the bottle
20 she staged. Respondent Kim then returned the Promethazine with codeine bottles to the shelf and
21 hid the staged bottle behind medication on the same shelf. Shortly thereafter, Respondent Kim
22 returned to the aisle, grabbed the staged bottle she filled, and hid the staged bottle in a lunch box
23 located in a refrigerator used by employees. Once Respondent completed her shift, Respondent
24 retrieved her personal items and the lunch box with Promethazine with codeine. Respondent Kim
25 exited the store. On August 12, 2020, video showed Respondent Kim repeating the same actions
26 as the day before and leaving the store with an additional bottle of Promethazine with codeine.

27 28. On August 14, 2020, Respondent Rite Aid's Senior Leader of Investigations MI and
28 Regional Manager JB interviewed Respondent Kim. Respondent Kim admitted verbally, and

1 provided a written statement, that she took the Promethazine with codeine and sold the bottles on
2 the street. Respondent Kim admitted to stealing seven complete bottles of Promethazine with
3 codeine over the course of fourteen weeks. Shortly thereafter, the Anaheim Police Department
4 arrested Respondent Kim. Respondent Kim admitted to the police officer that she stole seven
5 bottles of Promethazine with codeine from Respondent Rite Aid.

6 **Respondent Che-Quach and Respondent Rite Aid**

7 29. On or about September 14, 2020, Board Inspector ED spoke with Respondent Che-
8 Quach and later received a written statement regarding Respondent Rite Aid's pharmacy
9 operations. Respondent Che-Quach confirmed that Respondent Rite Aid conducted cycle counts
10 for monthly controlled Schedule II and some of III to V substances, and conducted an annual
11 cycle count for all controlled substances. Respondent Che-Quach confirmed that all pharmacy
12 staff could place orders using the telestock system without pharmacist oversight. While
13 Respondent Rite Aid had three security cameras, Respondent Che-Quach did not monitor video
14 footage on a regular basis, describing the monitoring as "very rarely." Respondent Che-Quach's
15 written statement indicated that the pharmacy required the front store staff check all staff
16 belongings prior to exiting the pharmacy, which contradicted her verbal statement that "we don't
17 normally check because nobody is allowed to bring personal belongings inside the pharmacy."

18 30. On or around September 15, 2020, Board Inspector ED conducted a site inspection of
19 Respondent Rite Aid. As part of the inspection, Board Inspector ED interviewed Respondent
20 Che-Quach and Respondent Rite Aid Regional Manager JB. Board Inspector ED obtained a
21 stock on hand report from Respondent Che-Quach. Respondent Che-Quach confirmed that she
22 conducted an accurate count and accounted for Respondent Rite Aid's entire inventory that had
23 not been dispensed. The on-hand report reflected the following:

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Drug	Units	Ending Inventory (9/15/2020)
ZOLPIDEM TARTRATE 10 MG TABLET	Tablet	624
TRAMADOL HCL 50 MG TABLET	Tablet	1044
PROMETHAZINE-CODEINE SYRUP	milliliters	710
ALPRAZOLAM 2 MG TABLET	Tablet	255

31. During the investigation, Board Inspector ED obtained Respondent Rite Aid's DEA Form 106 dated July 27, 2020. Respondent Rite Aid reported the following as lost or stolen:

LIST OF CONTROLLED SUBSTANCES LOST OR STOLEN					
Trade Name of Substances or Preparation		NDC No.	Dosage Strength	Dosage Form	Total Quantity Lost or Stolen
1	Zolpidem Tartrate	65862016001	10 MG	TA	250
2	Zolpidem Tartrate	16714062201	10 MG	TA	69
3	Tramadol HCL	65162062710	50 MG	TA	117
4	Promethazine-Codeine	27808006502	6.25-10/5	ML	6287
5	Promethazine-Codeine	60432060616	6.25-10/5	ML	554
6	Alprazolam	59762371901	0.25 MG	TA	22
7	Alprazolam	00781106101	0.25 MG	TA	7
8	Alprazolam	00378400701	2 MG	TA	64
9	Phentermine HCL	13107006101	37.5 MG	TA	36

32. Respondent Rite Aid provided Board Inspector ED with the following Disposition Records for the period May 1, 2017, through September 15, 2020:

Drug	Units	Disposition
ZOLPIDEM TARTRATE 10 MG TABLET	Tablet	52,812
TRAMADOL HCL 50 MG TABLET	Tablet	84,985
PROMETHAZINE-CODEINE SYRUP	Milliliters	73,144
ALPRAZOLAM 2 MG TABLET	Tablet	16,142

33. Board Inspector ED determined that the audit conducted by Respondent Rite Aid incorrectly included previous DEA 106 forms and the stock on-hand counts were changed to

1 reflect Respondent Rite Aid's computer generated inventory records. Respondent Rite Aid
 2 revised the audit but the audit still incorrectly included two previous DEA 106 forms.
 3 After discussing the audit with Board Inspector ED, Respondent Rite Aid amended the audit to
 4 reflect the following:

Board Audit 5/01/2017 to 09/15/2020										
Drug	Unit	Begin- ning Inven- tory	Acquis- - tion WLS	ACQ Total	Dis- position	Re- turn	Pre- vious DEA 106	Ending Inventory 9/15/20	DISPO Total	Variance
Zolpidem Tartrate 10MG	Table	1659	52300	53959	52812	-		624	53436	523
Tramadol HCL 50 MG	Table	1920	84200	86120	84985	5		1044	86034	86
Promethazine- Codeine Syrup	ML	3784	82775	86559	73144	-	713	710	74567	11992
Alprazolam 2 MG	Table	506	16100	16060	16142	-		255	16397	209

14 34. Board Inspector ED received records of purchases, credits, and dispositions for the
 15 period May 1, 2017, through September 15, 2020, for the medications identified as lost or stolen
 16 by Respondent Rite Aid. Based on the evidence provided, Board Inspector ED performed an
 17 audit on behalf of the Board and determined as follows:

Board Audit 5/01/2017 to 09/15/2020										
Drug	Unit	Begin- ning Inven- tory	Acquis- - tion WLS	ACQ Total	Dis- position	Re- turn	Ending Inventory 9/15/20	DISPO Total	Variance	
Zolpidem Tartrate 10MG	Table	1659	52300	53959	52812	-	624	53436	523	
Tramadol HCL 50 MG	Table	1920	84200	86120	84985	5	1044	86034	86	
Promethazine- Codeine Syrup	ML	3784	82775	86559	73144	-	710	73854	12705	
Alprazolam 2 MG	Table	506	16100	16060	16142	-	255	16397	209	

1 35. The Board's audit for the period between May 1, 2017, and September 15, 2020,
2 revealed a positive Variance for the following drugs.

3 a.) 523 tablets of zolpidem 10mg;

4 b.) 86 tablets of tramadol 50mg;

5 c.) 12,705 milliliters of promethazine and codeine syrup; and

6 d.) 209 tablets of alprazolam 2 mg.

7 **FIRST CAUSE FOR DISCIPLINE-RESPONDENT KIM**

8 **(Unprofessional Conduct-Moral Turpitude, Dishonesty, Fraud, and Deceit)**

9 36. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code
10 section 4301 subdivision (f), in that she engaged in unprofessional conduct involving moral
11 turpitude, dishonesty, fraud, and deceit when she diverted seven bottles of promethazine and
12 codeine syrup with the intent to sell them, as more fully set forth in paragraphs 23 through 33
13 which are incorporated by reference as if fully set forth herein.

14 **SECOND CAUSE FOR DISCIPLINE-RESPONDENT KIM**

15 **(Unprofessional Conduct- Unlawful Possession of Controlled Substances)**

16 37. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code
17 section 4060 and Health and Safety Code section 11173, subdivision (a), by and through Code
18 section 4301, subdivisions (j) and (o) for unprofessional conduct, in that while employed and on
19 duty as a pharmacy technician at Respondent Rite Aid, Respondent possessed a controlled
20 substance (codeine) without authorization or a valid prescription, as more particularly set forth in
21 paragraphs 23 through 33 which are incorporated by reference as if fully set forth herein.

22 **THIRD CAUSE FOR DISCIPLINE-RESPONDENT KIM**

23 **(Unprofessional Conduct: Violating Laws and Regulations Governing Pharmacy)**

24 38. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code
25 section 4301 subdivision (o), for unprofessional conduct, in that while employed and on duty as a
26 pharmacy technician at Respondent Rite Aid, Respondent violated or attempted to violate,
27 directly or indirectly, laws governing pharmacy, as more particularly set forth above in
28 paragraphs 23 through 33 which are incorporated by reference as if fully set forth herein.

1 **FOURTH CAUSE FOR DISCIPLINE-RESPONDENT KIM**

2 **(Unlawful Furnishing of Controlled Substances)**

3 39. Respondent Rosemary Hyun Ju Kim is subject to discipline under Code section
4 4059, subdivision (a), and Health and Safety Code section 11171, by and through Code section
5 4301, subdivisions (j) and (o) for unprofessional conduct, in that while employed as a pharmacy
6 technician at Respondent Rite Aid, Respondent furnished a controlled substance and dangerous
7 drug without a valid prescription, as more particularly set forth above in paragraphs 23 through
8 33 which are incorporated by reference as if fully set forth herein.

9 **FIFTH CAUSE FOR DISCIPLINE-RESPONDENT CHE QUACH**

10 **(Operational Standards and Security)**

11 40. Respondent Tracy Dieuthao Che-Quach is subject to disciplinary action under
12 Code section 4081 subdivision (a) and Code section 4332, in conjunction with California Code of
13 Regulations, title 16 section 1714 subdivision (b) in that while employed as the Pharmacist-in-
14 Charge at Respondent Rite Aid she failed to maintain a current inventory and records of
15 acquisition and disposition of dangerous drugs and failed to maintain dangerous drugs in a safe
16 and secure manner as more particularly set forth above in paragraphs 23 through 33 above which
17 are incorporated by reference as if fully set forth herein.

18 **SIXTH CAUSE FOR DISCIPLINE-RESPONDENT RITE AID**

19 **(Operational Standards and Security)**

20 41. Respondent Rite Aid is subject to disciplinary action under Code section 4081,
21 subdivision (a) and Code section 4332, in conjunction with California Code of Regulations, title
22 16 section 1714 subdivision (b) in that an audit of Respondent Rite Aid revealed losses of
23 dangerous drugs. Respondent Rite Aid failed to maintain a current inventory and records of
24 acquisition and disposition of dangerous drugs and failed to maintain dangerous drugs in a safe
25 and secure manner as more particularly set forth in paragraphs 23 through 33 above which are
26 incorporated by reference as if fully set forth herein.

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1 **OTHER MATTERS**

2 1. Pursuant to Section 4307, if Pharmacy Permit Number PHY 42426 issued to Rite
3 Aid Corporation dba Rite Aid 5770 is suspended, revoked or placed on probation, Respondent
4 Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer,
5 director, associate, or partner of a licensee of the Board.

6 2. Pursuant to Section 4307, if Pharmacy Permit Number PHY 42426 issued to Rite
7 Aid Corporation., dba Rite Aid 5770 is suspended, revoked or placed on probation, and
8 Respondent Che-Quach, while acting as the manager, administrator, owner, member, officer,
9 director, associate, or partner, had knowledge of or knowingly participated in any conduct for
10 which Pharmacy Permit Number PHY 42426 was revoked, suspended, or placed on probation,
11 Respondent Che-Quach shall be prohibited from serving as a manager, administrator, owner,
12 member, officer, director, associate, or partner of a licensee of the Board.

13 3. Pursuant to Section 4307, if Pharmacist License Number RPH 42661 issued to
14 Tracy Dieuthao Che-Quach is suspended or revoked, Respondent Che-Quach shall be prohibited
15 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
16 of a licensee.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Permit Number PHY 42426, issued to Rite Aid
21 Corporation, dba Rite Aid 5770;

22 2. Revoking or suspending Pharmacy Technician Registration Number TCH 75505,
23 issued to Rosemary Hyun Ju Kim;

24 3. Revoking or suspending Pharmacist License Number RPH 42661, issued to Tracy
25 Dieuthao Che-Quach;

26 4. Ordering Respondent Rite Aid, Respondent Rosemary Hyun Ju Kim and Respondent
27 Tracy Dieuthao Che-Quach to pay the Board of Pharmacy the reasonable costs of the
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1 investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3; and,

3 5. Taking such other and further action as deemed necessary and proper.

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DATED: 4/13/2021 _____

Signature on File

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

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