

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

In the Matter of the Accusation Against:

JULIE ANN PEROUTKA, Respondent

Agency Case No. 7315

OAH No. 2022110800

DECISION AFTER REJECTION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 16, 2023, and February 22, 2023, by videoconference from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Andrew Benzinger, Attorney at Law, represented Julie Anne Peroutka (respondent), who was present.

Evidence was received. The record was held open until March 24, 2023, to allow the parties to file written closing arguments. On March 24, 2023, the record closed, and the matter was submitted for decision.

The ALJ issued a Proposed Decision on April 19, 2023. On May 24, 2023, 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 on November 7, 2023, issued a Corrected Order setting December 7, 2023, as the date for the submission of written argument. No new evidence was permitted.

Respondent subsequently filed a request for extension of time to submit written argument, and on November 14, 2023, the Board issued an Order extending the date for submission of written argument until January 29, 2024. Both parties timely submitted written argument. Thereafter, pursuant to section 11517(c)(2)(E)(iv) of the Government Code, the Board determined that special circumstances existed to delay the issuance of the Decision After Rejection, and issued an Order dated January 30, 2024, extending the time for issuance of its Decision After Rejection until March 4, 2024.

The Board, having reviewed and considered the entire record, including the transcripts and administrative record and written argument submitted by both parties, now issues this Decision After Rejection.

FACTUAL FINDINGS

Background and Procedural History

1. On January 11, 1995, the Board issued respondent Pharmacist License Number RPH 47729 (license). The license will expire on August 31, 2024, unless renewed or revoked.

2. On September 26, 2022, complainant signed and thereafter filed with the Board an Accusation against respondent. The Accusation alleges cause to discipline respondent's license based on unprofessional conduct. Specifically, the Accusation alleges respondent: (1) engaged in acts of moral turpitude, dishonesty, or deceit; (2)

knowingly filled out a document with false facts; and (3) inappropriately exercised her education, training, and experience as a pharmacist.

3. Respondent timely filed a Notice of Defense. The matter was set for evidentiary hearing pursuant to Government Code section 11500 et seq.

4. After hearing, on March 17, 2023, complainant filed a motion to amend the Accusation to correct a scrivener's error. Specifically, complainant sought to amend the second cause for discipline to allege a violation of Business and Professions Code section 4301, subdivision (g). At any time before a matter is submitted for decision, the Board may file, or permit the filing of, an Amended Accusation. (Gov. Code, § 11507.) At the time complainant's motion was made, the matter had not yet been submitted for decision. Thus, in the Proposed Decision the ALJ determined that the motion was timely, and granted it. The Board agrees with this determination.

Complainant's Evidence

5. Respondent was previously employed as a pharmacist at Walmart store number 10-2418 (Walmart) in Placerville, California. On November 8, 2021, Walmart notified the Board that "[respondent] was terminated for violation of Walmart Pharmacy's Standard Operating Procedures for Immunizations." The notification did not provide any further information regarding which procedures had been violated or how they had been violated.

TESTIMONY OF DENISE DUKATZ, PHARM.D.

6. Denise Dukatz has been a licensed pharmacist in the State of California for over 30 years and has worked as a Pharmacist Inspector for the Board since December 2014. She is responsible for pharmacy inspections and investigating

allegations of misconduct by pharmacists. Dr. Dukatz was assigned to investigate the circumstances surrounding respondent's termination and testified at hearing.

7. On November 29, 2021, Dr. Dukatz emailed Shelly Tustison,¹ Pharm.D., the Walmart U.S. Ethics and Compliance Director, and requested additional information regarding the circumstances underlying respondent's termination. She also requested copies of the policies and procedures that respondent was alleged to have violated.

8. Dr. Dukatz was provided with a typewritten statement from Bill Huynh, who is the Walmart Market Health and Wellness Director. Mr. Huynh wrote that on October 4, 2021, respondent processed an influenza (flu) vaccine which she removed from the pharmacy to administer to her son at home, and that she subsequently admitted knowing that doing so was against Walmart policy. During the investigation of the flu vaccine, respondent also admitted that she had self-administered a COVID-

¹ Dr. Tustison testified at hearing to the authenticity of the documents she provided to Dr. Dukatz.

19 vaccine in the Walmart pharmacy restroom earlier in 2021. Mr. Huynh explained that the self-administration of immunizations is also against Walmart policy.

9. The Walmart pharmacy policies and procedures regarding immunizations are explained in Walmart Pharmacy Operations Manual (POM) 1014, dated April 2021, which is entitled "Administering the Immunization." The following language appears on page one of the document:

Pharmacists are responsible for understanding the federal and state laws and regulations, as well as Walmart policy related to the administration of immunizations for the state in which they practice.

[Emphasis in original]

10. Per POM 1014, the policy regarding the administration of immunizations is as follows:

As it relates to an immunization prescription for self or family members, pharmacists may only administer vaccines to their family members as part of their regularly scheduled workday or at a Walmart/Sam's Club approved immunization event that is open to other patients.

Pharmacists must not immunize themselves.

[¶] . . . [¶]

Under no circumstances may a pharmacist remove a vaccine from the licensed premises to store, or for administration at home or at a non-approved off-site location. . . .

11. Whenever a vaccine is administered at Walmart, an Administration Record and Consent form (consent form) is required to be filled out and signed by the pharmacist and the patient. The name of the individual who administers the vaccine must also be listed on the consent form. The purpose of the consent form is to ensure that the patient is not allergic to the vaccine and healthy enough to receive it.

12. Walmart also utilizes an electronic database called Connexus when filling prescriptions. Employees are required to enter their credentials into a handheld device, which records when a prescription is filled, and the identity of the individual who fills it. Whenever a prescription is filled, a pharmacist is required to perform a series of tasks, including a visual check of the prescription and a patient consultation. Connexus also records the identity of the pharmacist who performs the tasks.

13. Dr. Dukatz obtained the consent form and Connexus records for respondent's son's flu vaccine. She confirmed that respondent processed the vaccine for her son on October 4, 2021, and signed it as the prescribing pharmacist. The consent form did not identify the individual who administered the vaccine, but the Connexus records indicate that respondent entered the vaccine into the database and performed all the requisite tasks.

14. Dr. Dukatz also obtained the consent form for respondent's COVID-19 vaccination, which was dated May 9, 2021. Respondent listed herself as the prescribing pharmacist and signed the form. However, she listed pharmacist technician Kyla Key as the individual who administered the vaccine. In a declaration dated February 7, 2022, Ms. Key denied administering respondent's vaccine and writing her name on respondent's consent form.

15. The Connexus records for respondent's COVID-19 vaccine indicate that respondent entered the vaccine into the database, but that Ms. Key performed the other requisite tasks. As a pharmacy technician, Kyla Key is prohibited from performing the tasks required of the pharmacist.

16. Dr. Dukatz was provided with a handwritten and typewritten statement from respondent, which was signed and dated October 19, 2021. Respondent admitted self-administering the COVID-19 vaccine and stated that she took the flu vaccine home to her son, because "[d]ue to his schedule he was unable to come in to get the vaccine during [her] working hours."

17. On February 14, 2022, Dr. Dukatz wrote respondent a letter to inform her that she was alleged to have engaged in unprofessional conduct and invited her to provide a written statement if there was additional information that she would like the Board to consider. In response, respondent provided Dr. Dukatz with a three-page typewritten statement, dated February 27, 2022. She denied knowing that self-immunization or administering a vaccine at home was against Walmart policy. She also alleged that multiple violations of Walmart policy and California law had been occurring in the Placerville Walmart pharmacy over time. With regard to listing Kyla Key as the individual who administered her COVID-19 vaccine, respondent wrote, in pertinent part:

In trying to finalize all the day's activities and quickly make sure all the immunization forms were completed, I was helping my technician complete all the forms. There was never any intention to forge any document.

TESTIMONY OF AMANUEL TESFAMICHAEL, PHARM.D.

18. Amanuel Tesfamichael has worked as a pharmacist for Walmart since 2017 and has been a pharmacy manager since 2019. He was respondent's supervisor at the Placerville Walmart.

19. Walmart pharmacy employees are provided with a copy of the current edition of the POM, and a copy of the POM is also available to review in the pharmacy. Additionally, when policies and procedures are updated, employees are notified of the updates via email. Each employee is responsible for being familiar with the most current edition of the POM. The policies contained in the POM are intended to protect patient safety and the integrity of pharmacy operations.

20. On October 5, 2021, Dr. Tesfamichael asked respondent how many flu vaccines had been administered the previous day. Respondent told Dr. Tesfamichael that no flu vaccines had been administered. Dr. Tesfamichael checked pharmacy records and confirmed that one flu vaccine had been administered the previous day to a member of respondent's family.

PRIOR DISCIPLINE

21. On June 2, 2016, respondent was issued citation number CI 2015 70589 for a violation of California Code of Regulations, title 16, section 1716 (variation from prescription). She was assessed a fine of \$1,000, which she paid in full.

Respondent's Evidence

TESTIMONY OF ADAM KAYE, PHARM.D.

22. Adam Kaye has been a licensed pharmacist in the State of California since 1995. He has been a Clinical Professor of Pharmacy Practice at the Thomas J. Long School of Pharmacy located at the University of the Pacific since 1999.

23. Dr. Kaye was asked to determine if respondent's violation of Walmart policy regarding immunizations constitutes unprofessional conduct. He explained that there is no California law or Board regulation that prohibits self-immunization or the immunization of a family member at home, and it is a relatively common practice among pharmacists. He concluded that respondent did not engage in unprofessional conduct. Dr. Kaye drafted an expert report and testified consisted with that report. In his report, he reasoned:

Walmart and other chain pharmacies may have implemented numerous policies and procedures including not drinking soft drinks in the pharmacy. These would not be considered violations of the Board of Pharmacies [*sic*] rules and regulations.

2023 DECLARATION OF KYLA KEY

24. On January 5, 2023, Kyla Key signed and dated a typewritten statement which was received in evidence at hearing. Ms. Key stated, in pertinent part:

I am also aware that the pharmacy manager, Amanuel Tesfamichael, would utilize the handheld unit to administer a vaccine without signing out the previous user and putting

in his own credentials. At times when the handheld was picked up to initiate the vaccine process the previous administration was still in the handheld left incomplete. If he was gone from the area we were to just finalize so we could start the next administration. We typically had only one handheld designated for immunization as the others were constantly utilized for pharmacy operations and only a couple of them were updated to be able to be utilized iifor [sic] vaccine administration.

RESPONDENT'S TESTIMONY

25. Respondent was born in Omaha, Nebraska, in 1965. She earned a Doctor of Pharmacy degree from the University of Nebraska Medical Center in 1989. She was hired by Walmart in 1996 and became the manager of the Walmart pharmacy in Jackson, California in 1999. She was named the Walmart regional manager of the year in 2001, and she transferred to the Placerville Walmart in late 2002. Aside from the 2016 citation, which she paid in full, she has no prior disciplinary record.

26. Walmart policies and procedures were frequently updated. Employees would typically be notified of the updates through computer-based learning (CBL) programs. If no CBL program was available for a particular policy update, the general practice was for the update to be printed, reviewed, and signed by each employee.

27. Respondent was unaware that removing vaccines from the pharmacy to administer to a family member at home was a violation of Walmart policy, and believed that she was complying with the immunization guidelines promulgated by the Center for Disease Control (CDC). Her son suffers from a medical condition which

she believed rendered him particularly susceptible to the COVID-19 Delta variant, and she felt it would be safer for him to receive the flu vaccine at home.

28. Respondent has been self-immunizing for years and was unaware that doing so was against Walmart policy. COVID-19 vaccine distribution and administration began in April 2021, and pharmacy employees were told that there was to be “zero waste” of any vaccine doses. There was one dose left at the end of a busy weekend in May 2021, which is when respondent chose to immunize herself. She believed that doing so was in compliance with and furtherance of the “zero waste” directive. Respondent was assisting Kyla Key in filling out the consent forms at the end of the day when she mistakenly wrote Ms. Key’s name on her own consent form as the individual who administered her immunization.

29. Respondent became aware of multiple legal and policy violations in the Placerville Walmart pharmacy during her tenure as a pharmacist there. She tried to bring the issues to Dr. Tesfamichael’s attention but does not believe that he took her concerns seriously.

Analysis

30. Complainant bears the burden of proving by clear and convincing evidence that respondent engaged in unprofessional conduct by: (1) engaging in acts of moral turpitude, dishonesty, or deceit; (2) knowingly filling out a document with false facts; and (3) inappropriately exercising her education, training, and experience as a pharmacist.

31. Walmart pharmacy employees are responsible for being familiar with the policies and procedures delineated in the POM. A copy of the POM is available in the pharmacy for reference, and employees are notified when the policies and procedures

are updated. The POM specifically prohibits pharmacists from immunizing themselves, and from removing vaccines from the pharmacy to administer at home.

32. On October 4, 2021, during the height of the COVID-19 pandemic, respondent removed a flu vaccine from the Walmart pharmacy to administer to her son at home. Respondent testified that her son suffers from a medical condition which she believed rendered him particularly susceptible to the COVID-19 Delta variant, and she felt it would be safer for him to receive the flu vaccine at home. During the investigation into the flu vaccine incident, respondent admitted that earlier that year, on May 9, 2021, she had self-administered the COVID-19 vaccine in the Walmart pharmacy restroom. Respondent testified that at the end of the day on May 9, 2021, there was one remaining dose of COVID-19 vaccine in the pharmacy. She further testified about her employer's "zero waste" policy regarding COVID-19 vaccines; the efforts she and her coworkers made on May 9, 2021, to publicize the availability of the one remaining vaccine throughout the store in an attempt to locate a customer to give it to; and that in light of the "zero waste" policy and not being able to locate another person to give it to, her last-minute decision to administer it to herself. At the end of that busy day, when she filled out the consent form for that vaccine, she mistakenly listed Kyla Key as the individual who administered the vaccine. It was unclear whether respondent was aware that her actions in removing a vaccine from the pharmacy to administer to a family member at home, and self-administering a vaccine, were against Walmart policy.

33. When all the evidence is considered, complainant proved each allegation in the Accusation. However, as explained below, the Board believes that under the unique circumstances of this case, formal discipline of respondent's license is not warranted.

Appropriate Discipline

34. 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. Respondent's alleged violations likely constitute "Category II" violations with a recommended discipline range from a minimum of revocation, stayed, with probation of three years, to a maximum of revocation.

35. 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.

36. In this case, respondent's conduct did not cause any actual harm to the public or any consumer. In a career spanning over 25 years, her disciplinary record is limited to a 2016 citation for unrelated conduct. While the conduct at issue here was in direct violation of Walmart policy, there is no law or regulation against self-immunization or administering vaccines to family members at home. Respondent's administration of the flu vaccine to her son at home was motivated by her concern for his health and safety. Respondent's administration of the COVID-19 vaccine to herself was motivated in part by her employer's "zero waste" directive. Additionally, there is no evidence that respondent or her son were not entitled to receive the vaccinations at issue in this case, or that the vaccines were diverted for an illicit purpose. Further, both

vaccine administrations occurred during the height of the COVID-19 pandemic, which was a time of extreme uncertainty and unprecedented stress for front-line healthcare professionals, including pharmacists.

37. Complainant proved each cause for discipline in the Accusation. However, when all the evidence is considered in light of the disciplinary criteria in the guidelines, the Board finds that formal discipline is not warranted, and would be unduly punitive under the unique circumstances of this case. Rather, the Board finds that administrative action, in the form of a citation and fine to be separately issued to respondent, is a more appropriate resolution. The public safety will not be compromised, and will be adequately protected, fulfilling the Board's highest priority (Bus. & Prof. Code, § 4001.1), by this more moderate measure in lieu of discipline.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving the allegations contained in the Accusation by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of "high probability." "It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

2. Based on the Factual Findings as a whole, the Board finds that complainant has met this burden. However, based on the substantial and compelling evidence of mitigating circumstances, and Factual Findings 32 and 36 in particular, the Board finds that formal discipline of respondent's license is not warranted. Rather, the Board finds that administrative action, in the form of a citation and fine to be separately issued to respondent, is a more appropriate resolution of this matter.

Costs

3. Business and Professions Code section 125.3 provides that a licensee found to have violated a licensing statute may be ordered to pay the reasonable costs of the investigation and prosecution of the case. Complainant here incurred a total of \$12,666.50 in enforcement costs. The ALJ found that requested enforcement costs of \$12,666.50 were reasonable given the issues in the case. Given the Board's determination that formal discipline of respondent's license is not warranted, however, the Board finds that cost recovery is inappropriate. Accordingly, respondent is not responsible to reimburse complainant's costs under Business and Professions Code section 125.3.

ORDER

The Accusation filed against Julie Ann Peroutka, RPH 47729, is DISMISSED.

This Decision shall become effective at 5:00 p.m. on March 31, 2024.

It is so ORDERED on March 1, 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:

JULIE ANN PEROUTKA,

Pharmacist License No. RPH 47729

Respondent

Agency Case No. 7315

OAH No. 2022110800

**ORDER EXTENDING TIME FOR
ISSUANCE OF A DECISION AFTER REJECTION**

On May 24, 2023, the California State Board of Pharmacy (Board) issued an Order rejecting the Proposed Decision in the above-entitled matter. As indicated in that Order, the 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, pursuant to Government Code section 11517, subdivision (c)(2)(E).

The Board received the transcripts on October 26, 2023. On November 7, 2023, the Board issued a Corrected Order notifying the parties that the transcripts of the hearing had become available, and setting December 7, 2023, as the date for submission of written argument. Respondent subsequently filed a request for extension of time to submit written argument. On or about November 14, 2023, the Board issued an Order extending the date for submission of written argument until January 29, 2024.

Pursuant to section 11517(c)(2)(E)(iv) of the Government Code, the Board shall issue its final decision on the matter not later than 100 days after receipt of the transcript (*i.e.*, February 3, 2024), unless the Board finds that a further delay of up to 30 days is required by special circumstances. The Board now finds that such special circumstances exist to delay the issuance of the final decision. These special circumstances consist of the following: Respondent requested an extension of time to submit written argument. Respondent's request having been considered, and good cause appearing, the Board granted Respondent's request and gave the parties until January 29, 2024, to submit written argument. The Board is not scheduled to meet again until February 8, 2024, and has determined that there is insufficient time and it would otherwise be administratively infeasible, overly burdensome, and an inefficient use of resources to convene another meeting, provide the requisite advance public notice, and issue a final decision after the Board's deliberation, by February 3, 2024. Accordingly, the Board's Decision After Rejection in the above-entitled matter will be rendered and issued on or before March 4, 2024.

It is so ORDERED on January 31, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive, flowing style.

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:

JULIE ANN PEROUTKA,

Pharmacist License No. RPH 47729

Respondent

Agency Case No. 7315

OAH No. 2022110800

**ORDER EXTENDING DATE FOR SUBMISSION OF WRITTEN
ARGUMENT**

On November 7, 2023, the California State Board of Pharmacy (Board) issued a Corrected Order notifying the parties that the transcripts (administrative record) of the hearing in the above-entitled matter had become available, and setting December 7, 2023, as the date for submission of written argument. Respondent subsequently filed a request for extension of time to submit written argument.

Respondent's request having been considered, and good cause appearing, IT IS HEREBY ORDERED:

(1) That respondent's request be, and is, hereby granted.

(2) That the parties are given until **January 29, 2024**, to submit written argument to the Board by mail or email as follows: Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov.

(3) That, consistent with previous Orders issued by the Board in this matter, the 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 by the above-stated deadline. No new evidence may be submitted.

It is so ORDERED on November 14, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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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:

JULIE ANN PEROUTKA,

Pharmacist License No. RPH 47729

Respondent

Agency Case No. 7315

OAH No. 2022110800

**CORRECTED CORDER 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 May 24, 2023. 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. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **December 7, 2023**.

It is so ORDERED on November 7, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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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:

JULIE ANN PEROUTKA,

Pharmacist License No. RPH 47729

Respondent

Agency Case No. 7315

OAH No. 2022110800

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 May 24, 2023. 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. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **December 7, 2023**.

It is so ORDERED on November 7, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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Seung W. Oh, Pharm.D.
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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JULIE ANN PEROUTKA,

Pharmacist License No. RPH 47729

Respondent

Agency Case No. 7315

OAH No. 2022110800

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 May 24, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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In the Matter of the Accusation Against:

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OAH No. 2022110800

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 16, 2023, and February 22, 2023, by videoconference from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Andrew Benzinger, Attorney at Law, represented Julie Anne Peroutka (respondent) who was present.

Evidence was received. The record was held open until March 24, 2023, to allow the parties to file written closing arguments. On March 24, 2023, the record closed, and the matter was submitted for decision.

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4. After hearing, on March 17, 2023, complainant filed a motion to amend the Accusation to correct a scrivener's error. Specifically, complainant seeks to amend the second cause for discipline to allege a violation of Business and Professions Code section 4301, subdivision (g).

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19 vaccine in the Walmart pharmacy restroom earlier in 2021. Mr. Huynh explained that the self-administration of immunizations is also against Walmart policy.

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As it relates to an immunization prescription for self or family members, pharmacists may only administer vaccines to their family members as part of their regularly scheduled workday or at a Walmart/Sam's Club approved immunization event that is open to other patients.

Pharmacists must not immunize themselves.

[¶] . . . [¶]

Under no circumstances may a pharmacist remove a vaccine from the licensed premises to store, or for administration at home or at a non-approved off-site location. . . .

11. Whenever a vaccine is administered at Walmart, an Administration Record and Consent form (consent form) is required to be filled out and signed by the pharmacist and the patient. The name of the individual who administers the vaccine must also be listed on the consent form. The purpose of the consent form is to ensure that the patient is not allergic to the vaccine and healthy enough to receive it.

12. Walmart also utilizes an electronic database called Connexus when filling prescriptions. Employees are required to enter their credentials into a handheld device, which records when a prescription is filled, and the identity of the individual who fills it. Whenever a prescription is filled, a pharmacist is required to perform a series of tasks, including a visual check of the prescription and a patient consultation. Connexus also records the identity of the pharmacist who performs the tasks.

13. Dr. Dukatz obtained the consent form and Connexus records for respondent's son's flu vaccine. She confirmed that respondent processed the vaccine for her son on October 4, 2021, and signed it as the prescribing pharmacist. The consent form did not identify the individual who administered the vaccine, but the Connexus records indicate that respondent entered the vaccine into the database and performed all the requisite tasks.

14. Dr. Dukatz also obtained the consent form for respondent's COVID-19 vaccination, which was dated May 9, 2021. Respondent listed herself as the prescribing pharmacist and signed the form. However, she listed pharmacist technician Kyla Key as the individual who administered the vaccine. In a declaration dated February 7, 2022, Ms. Key denied administering respondent's vaccine and writing her name on respondent's consent form.

15. The Connexus records for respondent's COVID-19 vaccine indicate that respondent entered the vaccine into the database, but that Ms. Key performed the other requisite tasks. As a pharmacy technician, Kyla Key is prohibited from performing the tasks required of the pharmacist.

16. Dr. Dukatz was provided with a handwritten and typewritten statement from respondent, which was signed and dated October 19, 2021. Respondent admitted self-administering the COVID-19 vaccine and stated that she took the flu vaccine home to her son, because "[d]ue to his schedule he was unable to come in to get the vaccine during [her] working hours."

17. On February 14, 2022, Dr. Dukatz wrote respondent a letter to inform her that she was alleged to have engaged in unprofessional conduct and invited her to provide a written statement if there was additional information that she would like the Board to consider. In response, respondent provided Dr. Dukatz with a three-page typewritten statement, dated February 27, 2022. She denied knowing that self-immunization or administering a vaccine at home was against Walmart policy. She also alleged that multiple violations of Walmart policy and California law had been occurring in the Placerville Walmart pharmacy over time. With regard to listing Kyla Key as the individual who administered her COVID-19 vaccine, respondent wrote, in pertinent part:

In trying to finalize all the day's activities and quickly make sure all the immunization forms were completed, I was helping my technician complete all the forms. There was never any intention to forge any document.

TESTIMONY OF AMANUEL TESFAMICHAEL, PHARM.D.

18. Amanuel Tesfamichael has worked as a pharmacist for Walmart since 2017 and has been a pharmacy manager since 2019. He was respondent's supervisor at the Placerville Walmart.

19. Walmart pharmacy employees are provided with a copy of the current edition of the POM, and a copy of the POM is also available to review in the pharmacy. Additionally, when policies and procedures are updated, employees are notified of the updates via email. Each employee is responsible for being familiar with the most current edition of the POM. The policies contained in the POM are intended to protect patient safety and the integrity of pharmacy operations.

20. On October 5, 2021, Dr. Tesfamichael asked respondent how many flu vaccines had been administered the previous day. Respondent told Dr. Tesfamichael that no flu vaccines had been administered. Dr. Tesfamichael checked pharmacy records and confirmed that one flu vaccine had been administered the previous day to a member of respondent's family.

PRIOR DISCIPLINE

21. On June 2, 2016, respondent was issued citation number CI 2015 70589 for a violation of California Code of Regulations, title 16, section 1716 (variation from prescription). She was assessed a fine of \$1,000, which she paid in full.

Respondent's Evidence

TESTIMONY OF ADAM KAYE, PHARM.D.

22. Adam Kaye has been a licensed pharmacist in the State of California since 1995. He has been a Clinical Professor of Pharmacy Practice at the Thomas J. Long School of Pharmacy located at the University of the Pacific since 1999.

23. Dr. Kaye was asked to determine if respondent's violation of Walmart policy regarding immunizations constitutes unprofessional conduct. He explained that there is no California law or Board regulation that prohibits self-immunization or the immunization of a family member at home, and it is a relatively common practice among pharmacists. He concluded that respondent did not engage in unprofessional conduct. Dr. Kaye drafted an expert report and testified consisted with that report. In his report, he reasoned:

Walmart and other chain pharmacies may have implemented numerous policies and procedures including not drinking soft drinks in the pharmacy. These would not be considered violations of the Board of Pharmacies [*sic*] rules and regulations.

2023 DECLARATION OF KYLA KEY

24. On January 5, 2023, Kyla Key signed and dated a typewritten statement which was received in evidence at hearing. Ms. Key stated, in pertinent part:

I am also aware that the pharmacy manager, Amanuel Tesfamichael, would utilize the handheld unit to administer a vaccine without signing out the previous user and putting

in his own credentials. At times when the handheld was picked up to initiate the vaccine process the previous administration was still in the handheld left incomplete. If he was gone from the area we were to just finalize so we could start the next administration. We typically had only one handheld designated for immunization as the others were constantly utilized for pharmacy operations and only a couple of them were updated to be able to be utilized iifor [sic] vaccine administration.

RESPONDENT'S TESTIMONY

25. Respondent was born in Omaha, Nebraska, in 1965. She earned a Doctor of Pharmacy degree from the University of Nebraska Medical Center in 1989. She was hired by Walmart in 1996 and became the manager of the Walmart pharmacy in Jackson, California in 1999. She was named the Walmart regional manager of the year in 2001, and she transferred to the Placerville Walmart in late 2002. Aside from the 2016 citation, which she paid in full, she has no prior disciplinary record.

26. Walmart policies and procedures were frequently updated. Employees would typically be notified of the updates through computer-based learning (CBL) programs. If no CBL program was available for a particular policy update, the general practice was for the update to be printed, reviewed, and signed by each employee.

27. Respondent was unaware that removing vaccines from the pharmacy to administer to a family member at home was a violation of Walmart policy, and believed that she was complying with the immunization guidelines promulgated by the Center for Disease Control (CDC). Her son suffers from a medical condition which

she believed rendered him particularly susceptible to the COVID-19 Delta variant, and she felt it would be safer for him to receive the flu vaccine at home.

28. Respondent has been self-immunizing for years and was unaware that doing so was against Walmart policy. COVID-19 vaccine distribution and administration began in April 2021, and pharmacy employees were told that there was to be “zero waste” of any vaccine doses. There was one dose left at the end of a busy weekend in May 2021, which is when respondent chose to immunize herself. She believed that doing so was in compliance with and furtherance of the “zero waste” directive. Respondent was assisting Kyla Key in filling out the consent forms at the end of the day when she mistakenly wrote Ms. Key’s name on her own consent form as the individual who administered her immunization.

29. Respondent became aware of multiple legal and policy violations in the Placerville Walmart pharmacy during her tenure as a pharmacist there. She tried to bring the issues to Dr. Tesfamichael’s attention but does not believe that he took her concerns seriously.

Analysis

30. Complainant bears the burden of proving by clear and convincing evidence that respondent engaged in unprofessional conduct by: (1) engaging in acts of moral turpitude, dishonesty, or deceit; (2) knowingly filling out a document with false facts; and (3) inappropriately exercising her education, training, and experience as a pharmacist. Complainant has met her burden.

31. Walmart pharmacy employees are responsible for being familiar with the policies and procedures delineated in the POM. A copy of the POM is available in the pharmacy for reference, and employees are notified when the policies and procedures

are updated. The POM specifically prohibits pharmacists from immunizing themselves, and from removing vaccines from the pharmacy to administer at home.

32. On October 4, 2021, respondent removed a flu vaccine from the Walmart pharmacy to administer to her son at home, in knowing violation of Walmart policy. The next day, she falsely reported to her supervisor that no vaccines were administered on October 4, 2021, and only admitted administering the vaccine to her son at home after she became aware that she was the subject of a formal investigation. During that investigation, respondent admitted that she had self-administered the COVID-19 vaccine in the Walmart pharmacy restroom. When she filled out the consent form for that vaccine, she falsely listed Kyla Key as the individual who administered the vaccine.

33. In knowingly violating the policies and procedures of her employer, respondent inappropriately exercised her training and experience as a pharmacist. When all the evidence is considered, complainant proved each allegation in the Accusation. Thus, respondent's license is subject to discipline.

Appropriate Discipline

34. 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. Respondent's alleged violations constitute "Category II" violations with a recommended discipline range from a minimum of revocation, stayed, with probation of five years, to a maximum of revocation.

35. 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.

36. In this case, respondent's conduct did not cause any actual harm to the public or any consumer. In a career spanning over 25 years, her disciplinary record is limited to a 2016 citation for unrelated conduct. While the conduct at issue here was in direct violation of Walmart policy, there is no law or regulation against self-immunization or administering vaccines to family members at home. Respondent's administration of the flu vaccine to her son at home was motivated by her concern for his health and safety. Additionally, there is no evidence that respondent or her son were not entitled to receive the vaccinations at issue in this case, or that the vaccines were diverted for an illicit purpose.

37. Complainant proved each cause for discipline in the Accusation. However, when all the evidence is considered in light of the disciplinary criteria in the guidelines, outright revocation of respondent's license is not warranted. As such, respondent's license will be revoked, the revocation will be stayed, and respondent will be placed on probation for a period of five years, subject to the terms and conditions listed below.

Costs of Enforcement

38. 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 \$12,666.50. In support of this amount, complainant submitted: (1) a Certification of Prosecution Costs: Declaration of Katelyn E. Docherty dated February 14, 2023, with an attached billing summary (AG Certification), which states the Attorney General's Office billed the Board \$10,438.75 for time spent on this matter (AG Costs); and (2) a Certification of Investigative Costs: Declarations of Julia Ansel and Denise Dukatz (Investigative Declarations), and a Certification of Costs signed by complainant, which indicate 15 hours of investigative costs at the rate of \$121 per hour, and 3.25 hours of supervising investigative costs at the rate of \$127 per hour, for a total of \$2,227.75 (Investigation Costs).

39. California Code of Regulations, title 1, section 1042 (section 1042), sets forth the requirements that an agency must comply with in order to recover its costs. Section 1042 states that a declaration regarding services provided by a regular agency employee must include "the general tasks performed, the time spent on each task, and the method of calculating the cost."

40. The AG Certification describes the tasks performed, the amount of time billed, and the billing rate by each professional to establish the AG Costs. The Investigative Declarations and Certification of Costs signed by complainant describe the tasks performed, the amount of time billed, and the billing rate by each professional to establish the Investigation Costs. The AG Declaration, Investigative Declarations, and Certification of Costs signed by complainant satisfy the requirements set forth in section 1042. Complainant's request for costs is further addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

Motion to Amend

1. At any time before a matter is submitted for decision, the Board may file, or permit the filing of, an Amended Accusation. (Gov. Code, § 11507.) On March 17, 2023, complainant moved to amend the Accusation to correct a scrivener's error and allege a violation of Business and Profession's Code section 4301, subdivision (g) as the second cause for discipline. At the time the motion was made, the matter had not yet been submitted for decision. Thus, the motion is timely, and will be granted.

Burden and Standard of Proof

2. Complainant bears the burden of proving the allegations contained in the Accusation by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of "high probability." "It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

First Cause for Discipline

3. The Board may discipline a pharmacist for unprofessional conduct, which includes, but is not limited to, "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." (Bus. & Prof. Code, § 4301, subd. (f).)

4. Based on the Factual Findings and Legal Conclusions as a whole, and Factual Findings 20 and 32 in particular, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), on the grounds that respondent engaged in acts involving dishonesty.

Second Cause for Discipline

5. Unprofessional conduct also includes "[k]nowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts." (Bus. & Prof. Code, § 4301, subd. (g).)

6. Based on the Factual Findings as a whole, and Factual Finding 14 in particular, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (g), on the grounds that respondent misrepresented the existence of a state of facts.

Third Cause for Discipline

7. Business and Professions Code section 4306.5, subdivision (a), provides that it is also unprofessional conduct for a pharmacist to commit "[a]cts 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."

8. Based on the Factual Findings as a whole, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4306.5, on the grounds that respondent inappropriately exercised her training and experience as a

pharmacist by knowingly violating the policies and procedures of her employer relating to immunizations.

Costs

9. Business and Professions Code section 125.3 provides that a licensee found to have violated a licensing statute may be ordered to pay the reasonable costs of the investigation and prosecution of the case. Complainant here incurred a total of \$12,666.50 in enforcement costs. The requested enforcement costs of \$12,666.50 are reasonable given the issues in the case.

10. In *Zuckerman v. Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to determine whether the costs should be assessed in the particular circumstances of each case. Factors to be considered include whether charges against the licensee were dismissed or reduced at hearing, the licensee's subjective good faith belief in the merits of their respective position, whether there were any colorable challenges to the proposed discipline, ability to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

11. Here, respondent was not successful in getting charges dismissed or reduced at hearing. While respondent testified that she believed she was in compliance with CDC guidelines related to immunizations, she nonetheless violated the policies and procedures of her employer and presented little in the way of justification for doing so. The scope of the investigation was appropriate in light of the alleged misconduct, and there was no evidence presented of an inability to pay. Consequently, costs are ordered in the total amount of \$12,666.50. Respondent shall

be permitted to pay these costs in a payment plan approved by the Board or its designee as discussed below.

ORDER

Pharmacist License Number RPH 47729 issued to respondent Julie Anne Peroutka is REVOKED. However, the revocation is STAYED, and respondent is placed on probation for FIVE YEARS upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substance laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(a) of delinquency in submission of reports as directed may be added to the total period of probation.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of 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 of condition of probation; and timely

completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Continuing Education

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

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7315 and the terms, conditions and restrictions imposed on respondent by this decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all 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 shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) 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) have read the decision in case number 7315, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgments 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 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 7315, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), or (c) above at every entity licensed by the Board of the decision in case number 7315, and the terms and conditions imposed thereby in advance of respondent 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 undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), or (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 7315, and the terms and

conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgments 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 pharmacy license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. Notification of Change(s) in Name, Employment, Addresses, Phone Numbers

Respondent 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 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.

During the period of probation, respondent shall not supervise any ancillary personnel, including, but not limited to, pharmacy technicians, designated representatives, designated representatives-3PL in any entity licensed by the Board. Assumption of any such unauthorized ancillary personnel supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$12,666.50. Respondent shall make said payments as follows:

There shall be no deviation from the 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.

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

10. Probation Monitoring Costs

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

If respondent'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's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. License Surrender While on Probation

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent 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 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 the respondent's license history with the Board.

Upon acceptance of the surrender, respondent 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 may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent 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

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of twenty-four (24) 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 must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent 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 will resume practice at the required level. Respondent shall further notify the Board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacist in California for the minimum of hours. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent'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. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and the Board shall provide notice to respondent 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 violates probation in any respect, the Board, after giving respondent 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 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.

15. Completion of Probation

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

DATE: April 19, 2023

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearing

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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. 7315

13 **JULIE ANN PEROUTKA**
14 **2301 Talon Drive**
Shingle Springs, CA 95682

ACCUSATION

15 **Registered Pharmacist License No. RPH**
16 **47729**

17 Respondent.

18
19
20
21 **PARTIES**

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

25 2. On or about January 11, 1995, the Board of Pharmacy issued Registered Pharmacist
26 License Number RPH 47729 to Julie Ann Peroutka (Respondent). The Registered Pharmacist
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on August 31, 2024, unless renewed.

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 4300 of the Code states, in pertinent part:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 ...

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

22 5. Section 4300.1 of the Code 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.

29 **STATUTORY PROVISIONS**

30 6. Section 4301 of the Code states, in pertinent part:

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

34 ...

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

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

6 ...

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

12 ...

13 7. Section 4306.5 of the Code states, in pertinent part:

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

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

20 ...

21 **COST RECOVERY**

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

26 **FACTUAL ALLEGATIONS**

27 9. At all times relevant herein, Respondent was employed as a pharmacist at Walmart
28 #10-2418, in Placerville, California (“Walmart Pharmacy”).

10. On or around May 9, 2021, Respondent received a COVID-19 vaccine at Walmart
Pharmacy. The COVID-19 consent form for Respondent lists the name and title of pharmacy
technician K.K. under “Administering individual name and title (print).”

///

1 11. On or around October 4, 2021, Respondent processed a flu vaccine for her son at
2 Walmart Pharmacy.

3 12. On or around October 19, 2021, Walmart Market Health and Wellness Director, B.H.,
4 was made aware that although records reflected that Respondent's son was administered the flu
5 vaccine on October 4, 2021, Respondent's son did not come into Walmart Pharmacy on that date
6 to receive the vaccine. This information prompted B.H. to start an investigation. When B.H.
7 questioned Respondent about the situation, she admitted that she had taken the vaccine home and
8 administered it to her son at home rather than at the pharmacy. Respondent further admitted that
9 she knew the administration of the vaccine at home was against Walmart Pharmacy's practices.
10 During this interview, Respondent also informed B.H. that she self-administered a COVID-19
11 vaccine to herself in the bathroom earlier that year.

12 13. On or around October 19, 2021, Respondent provided Walmart Pharmacy with a
13 written statement that stated: "On Monday, 10/4, I processed a flu vaccine for my 19 year old son.
14 He was not present at the time and was not able to come into the pharmacy so I actually processed
15 the flu vaccine but gave it to him at home." Respondent further stated, "I gave myself my own J
16 and J C19 shot."

17 14. On or around November 8, 2021, Walmart notified the Board that Respondent's
18 employment was terminated for knowingly violating Walmart Pharmacy's Standard Operating
19 Procedures for Immunizations.

20 15. On or around February 2, 2022, K.K. a pharmacy technician for Walmart Pharmacy
21 signed a declaration in which she confirmed that she had not signed the COVID-19 consent form
22 for Respondent, and that she did not administer the vaccine to Respondent as stated on
23 Respondent's patient consent form.

24 16. On or around February 14, 2022, Board inspector D.D. sent Respondent a written
25 notice regarding the allegations of her failure to comply with the law while employed by Walmart
26 Pharmacy, and informing Respondent that she could provide a written statement if there was
27 more information she would like the Board to know regarding the case.

28 ///

1 17. On or around February 28, 2022, Respondent submitted a written statement to Board
2 Inspector D.D. that stated the following:

3 a. "I administered a COVID-19 vaccine to myself due to a series of events that
4 transpired on that date."

5 b. "I have been administering medical injections to myself over a prolonged period of
6 time and did not realize this was against a stated policy."

7 c. "In trying to finalize all the day's activities and quickly make sure all the
8 immunization forms were completed, I was helping my technician complete all the
9 forms. There was never any intent to forge any document."

10 d. "In regards to the complaint that I took home a Fluzone vaccine to administer to my
11 son, I believed that I was following the updated CDC guidelines for administration
12 of vaccines to home-bound family members."

13 18. Walmart Pharmacy Operation Manual 1014 states:

14 a. "Under no circumstances may a pharmacist remove a vaccine from the licensed
15 premises to store, or for administration at home or at a non-approved off-site
16 location."

17 b. "As it relates to an immunization prescription for self or family members,
18 pharmacists may only administer vaccines to their family members as part of
19 their regularly scheduled workday or at a Walmart/Sam's Club approved
20 immunization event that is open to other patients. Pharmacists must not
21 immunize themselves."

22
23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Moral Turpitude, Dishonesty or Deceit)**

25 19. Respondent is subject to disciplinary action on the grounds of unprofessional conduct
26 as defined in Code section 4301, subdivision (f), in that on or about May 9, 2021 and October 4,
27 2021, Respondent engaged in moral turpitude, dishonesty, and deceit in the course of relations as
28 a licensee, when she self-administered a COVID-19 vaccine to herself, lied on the COVID-19

1 consent form about who administered the vaccine, and when she took home a Fluzone Quad PF
2 vaccine to administer to her son, as alleged in greater detail above in paragraphs 9-18.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Knowingly Filling out a Document with False Facts)**

5 20. Respondent is subject to disciplinary action on the grounds of unprofessional conduct
6 as defined in Code section 4301, subdivision (h), in that on or about May 9, 2021, Respondent
7 knowingly made or signed a certificate or document that falsely represents the existence or
8 nonexistence of a state of facts. Specifically, she wrote on her COVID-19 consent form that
9 pharmacy technician K.K. had administered the vaccine, despite the fact that Respondent had
10 self-administered the vaccine, as alleged in greater detail above in paragraphs 9-18.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 21. Respondent is subject to disciplinary action on the grounds of unprofessional conduct
14 as defined in Code section 4301, subdivision (o), pursuant to Code section 4306.5, subdivision
15 (a), in that on or about May 9, 2021, and October 4, 2022, Respondent engaged in the
16 inappropriate exercise of her education, training, and experience as a pharmacist, when
17 Respondent inappropriately administered two vaccines in violation of Walmart Pharmacy’s
18 policy and procedures, as alleged in greater detail above in paragraphs 9-20.

19
20 **DISCIPLINE CONSIDERATIONS**

21 22. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges that on or about June 2, 2016, the Board of Pharmacy issued Citation and
23 Fine, Order of Abatement number CI-2015-70589 to Respondent for Respondent having
24 committed the following offense: (i) deviated from the requirements of a prescription, pursuant to
25 16 California Code of Regulations, section 1716. The citation has since become final, and
26 Respondent has paid the \$1,000 fine imposed thereby.

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PRAYER

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

1. Revoking or suspending Registered Pharmacist License Number RPH 47729, issued to Julie Ann Peroutka;

2. Ordering Julie Ann Peroutka to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/26/2022

Signature on File

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

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