

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

In the Matter of the Accusation Against:

**GARFIELD BEACH CVS, LLC dba CVS PHARMACY #9649
Pharmacy Permit No. PHY 47946**

Respondent.

Agency Case No. 7321

OAH No. 2023040561

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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 October 25, 2023.

It is so ORDERED on September 25, 2023.

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:

GARFIELD BEACH CVS, LLC dba CVS PHARMACY #9649,

Permit No. PHY 47946

Respondent.

Agency Case No. 7321

OAH No. 2023040561

PROPOSED DECISION

Laurie Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 26, 2023, by videoconference.

Diana Petikyan, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Jeff J. Astarabadi, Attorney at Law, represented Garfield Beach CVS, LLC, dba CVS Pharmacy # 9649 (respondent or Pharmacy).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 26, 2023.

SUMMARY

The Board received a complaint in October 2021 from the San Bernardino County Department of Public Health (DPH) regarding a rodent infestation at a CVS in Yucaipa, California (CVS). A Board inspection of the CVS Pharmacy area confirmed extensive and active rodent infestation in November 2021. Feces were identified throughout the Pharmacy's false ceilings in the areas above the active medication shelving, work/processing/intake areas, the consultation area, and the back pharmacy storage area. Respondent took steps to address the infestation which was remediated by late November 2021. Respondent's failure to maintain its facilities in a clean and orderly condition free from rodents and insects constitutes a violation of pharmacy law.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 18, 2006, the Board of Pharmacy issued Permit Number PHY 47946 (Permit) to respondent. The Permit was in full force and effect at all times relevant to the charges and is scheduled to expire on June 1, 2024.

2. On December 29, 2022, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense and a Request for Hearing. This hearing ensued. All jurisdictional requirements have been met.

Failure to Maintain Operational Standards – Unsanitary Conditions and Rodent Infestation

COUNTY DEPARTMENT OF PUBLIC HEALTH INVESTIGATION

3. CVS operates a Pharmacy which is open to the public. It handles a high volume of prescriptions. In addition to the Pharmacy area, there is also a retail area in the CVS.

4. Luis Verde, an Environmental Health Specialist (EHS) with DPH, testified credibly at the hearing. EHS Verde has carried out approximately 1,000 inspections and investigations for DPH. DPH has jurisdiction over the retail store only. It does not have jurisdiction over the Pharmacy area and therefore DPH did not inspect the Pharmacy.

5. DPH received three online complaints regarding a rat infestation at CVS:

A. An online complaint dated October 25, 2021, states, "There are lots of rats in the pharmacy and front store and in the lunch room, back room everywhere."

B. A second online complaint dated October 27, 2021, states, "Rats in the pharmacy! Unhealthy for all."

C. A third online complaint dated October 27, 2021, states: "They have tried to get rid of the problem, but it is still really bad. Orkin says they can't find the rest. Instead of closing and fumigating they continue to place traps. 3 rats found in pharmacy medication shelves this weekend!!"

(Exs. 4 & 5).

///

6. Pharmacist-in-Charge (PIC) Ernest Okyere-Gyasi reported that on October 25, 2021, he saw a rodent near the Pharmacy door.

7. On October 26, 2021, Vanessa Salcedo, a DPH investigator, conducted an inspection of the retail store area of the CVS. There were fresh rodent droppings by the floor adjacent to the delivery door; on the floor adjacent to the back area entrance from the store; on the floor along the walls of the back area; one dropping on the floor in front of the refrigeration unit containing alcohol in the store; in a blue bin in the Pharmacy; and on the floor adjacent to the Pharmacy's emergency exit.

8. EHS Verde carried out inspections of CVS on October 29 and November 3, 2021, and substantiated that the rodent infestation was continuing. At least two rodents had been captured. Storage areas in the back closest to the Pharmacy were still the main areas of concern for infestation during those visits. Two visits also were conducted by the DPH's Mosquito and Vector Control (MVC) on October 28 and November 16, 2021. The MVC is a program within the DPH that protects the public health by controlling mosquitoes and other vectors, including rodents, that spread disease.

9. EHS Verde was informed that CVS had retained Orkin Pest Control (Orkin) on October 17, 2021. Orkin was engaged in ongoing efforts to eradicate the rodent problem at CVS. EHS Verde spoke with a representative from Orkin who was servicing CVS who stated they will be servicing CVS daily for the next 30 days to ensure no further infestation issues occur.

10. EHS Verde conducted an inspection of CVS on November 9, 2021, and concluded that CVS had remedied the issue and was no longer experiencing a rodent infestation. As of November 23, 2021, EHS Verde had not received any additional

complaints from CVS or the Pharmacy. At the hearing, EHS Verde opined that CVS had made a good faith effort to eliminate rodents from its store.

BOARD INVESTIGATION

11. This matter came to the Board's attention on October 28, 2021, when the Board received an online complaint from EHS Verde regarding the rodent infestation at CVS. The complaint investigation was assigned to Philip Wright, an inspector with the Board's compliance team, who testified credibly at the hearing. Inspector Wright holds a doctoral degree in Pharmacy and is a licensed pharmacist in California. He conducts Board inspections of hospital and retail pharmacies.

12. On November 9, 2021, Inspector Wright conducted a full routine pharmacy inspection and a complaint investigation of the Pharmacy. Prior to that, the Board had not inspected the Pharmacy since September 9, 2019. Inspector Wright observed the daily operations of the Pharmacy. He also conducted a full inspection of the Pharmacy, including active stockage shelves, medication processing areas, false ceilings, the consultation area, and the backroom/warehouse storage area.

13. Inspector Wright observed rodent droppings littering the areas above ceiling tiles in the Pharmacy directly above patient drop-off, medication shelves, medication processing areas, consultation areas, and back pharmacy storage locations. He also observed rodent droppings and cockroach remains in the Pharmacy back storage room, which is directly accessible to the Pharmacy. The Pharmacy's rear storage room also contained rat traps along the walls.

14. Inspector Wright spoke with all members of the Pharmacy staff. Pharmacy Technician Yoshin Carter confirmed he had observed what appeared to be a

rat in the break room. PIC Okyere-Gyasi had reported seeing a rodent near the Pharmacy door.

15. On November 9, 2021, Inspector Wright photographed rodent fecal material throughout the pharmacy above the false ceilings, including in the medication pickup and drop-of areas, medication storage shelves, medication processing areas, and back pharmacy storage locations. There was an extensive accumulation of fiber remnants at the Pharmacy's front drive-through window, on top of cabinets and refrigerators, and behind computers. This significant build-up of detritus is typically found in areas devoid of routine cleaning. Buildup of dust and fibers facilitates growth of insects, including mites, cockroaches, and spiders, which then attract foraging rodents who feed on the insects.

16. Inspector Wright raised pet rats for several years. He concluded that the amount and condition of the fecal material he observed at the Pharmacy was indicative of widespread infestation of multiple families of rats. The rats' nests are typically found in the side structure vertical walls and the rats traverse the store at night to foraging locations. Rodent fecal material is a source of bacteria and viruses, such as hantavirus, which pose a danger to human health.

17. During the November 9, 2021 inspection of the Pharmacy, Inspector Wright issued an Order of Correction directing respondent to remedy the infestation and clean and sanitize the Pharmacy. Respondent complied with the Order of Correction.

18. On November 30, 2021, Inspector Wright conducted another routine Pharmacy inspection and vermin complaint investigation. He conducted a re-inspection of the Pharmacy drug stock shelves, functional processing areas, false

ceiling throughout the Pharmacy, near the consultation area, and in the backroom. Inspector Wright verified that vermin and rodent fecal material had been removed. PIC Okyere-Gyasi informed him that the Pharmacy false ceiling had been cleaned twice to remove rodent fecal material. Inspector Wright also spoke with onsite Orkin exterminators who confirmed their continued eradication efforts for any remaining rodents and other vermin.

19. On December 3, 2021, Inspector Wright received an email from PIC Okyere-Gyasi who stated that Orkin has regularly treated the Pharmacy since November 1, 2021, returning every three to four days to treat the Pharmacy and retail areas of the CVS. PIC Okyere-Gyasi reported that the ceilings had been completely vacuumed to get rid of all rodent droppings.

20. On January 21, 2022, Inspector Wright asked CVS to provide him with its policies and procedures for dealing with pests or a vermin infestation. On February 8, 2022, he received an email response from CVS's Senior Consultant for Pharmacy Regulatory Affairs stating, "there is no specific infestation policy." (Ex. 24, p. A199). CVS has Policies and Procedures for Pharmacy Routine Cleaning and Equipment Maintenance, but it does not address the cleaning, control, or removal of pests or vermin.

21. Inspector Wright concluded that the Pharmacy failed to maintain operational standards in October and November 2021. The Pharmacy had not been maintained in a clean and orderly condition, free from rodents and insects, and the Pharmacy had failed to maintain its facilities, space, fixtures, and equipment so that drugs were safely and properly prepared and maintained. The Pharmacy had the "highest level of contamination" Inspector Wright has seen. Inspector Wright opined that the Pharmacy should have closed while it remediated the serious rodent and

vermin infestation, rather than remaining open and exposing the public to potential health risks.

Respondent's Position

22. Respondent does not dispute the facts. It emphasized that it did not act willfully or negligently regarding the infestation. Instead, it contends that it acted proactively to address the infestation by promptly contracting with Orkin on October 17, 2021, to remediate the issue and by hiring True Source on November 13, 2023, to clean up rodent droppings. Respondent asserts that it complied fully with the Order of Correction but it takes time and repeat visits to remediate a rodent infestation.

23. Respondent contends this is not an ongoing issue and that no further indication of an infestation was noted as of the Board's November 30, 2021 inspection.

24. Respondent asserts that it is not required to have policies and procedures for addressing an infestation. It also notes that the Pharmacy was never ordered to close down while the remediation was being conducted.

Cost Recovery

25. Complainant submitted evidence of costs of investigation and enforcement of this matter, totaling \$10,788.50. This consists of \$4,529.75 for inspection costs and \$6,258.75 for prosecution costs. (Ex. 3.) These amounts are reasonable.

///

///

///

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. As the party bringing administrative charges and seeking discipline against a licensee, Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175-176.)

2. Pharmacy permits are nonprofessional licenses because they do not have extensive educational, training, or testing requirements similar to professional licenses. (See *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) An applicant for a pharmacy permit need not be a pharmacist; instead, the applicant must designate a pharmacist-in-charge with the requisite education, training, and licensure. (Bus. & Prof., §§ 4110, subd. (a), 4113, subd. (a).) To impose discipline on the Pharmacy's nonprofessional pharmacy permit, Complainant need only prove cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917 (*Imports Performance*); Evid. Code, §115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

3. Business and Professions Code (Code) section 4301, subdivision (o), in pertinent part provides that the Board shall take action against any holder of a license who violates the laws or regulations governing pharmacy.

4. California Code of Regulations, title 16 (CCR), section 1714, subdivision (b), provides that each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely prepared and maintained.

5. CCR, section 1714, subdivision (c), provides that a pharmacy shall be maintained in a clean and orderly condition and be free from rodents and insects.

Cause for Discipline

6. Complainant established by a preponderance of the evidence that cause exists to discipline respondent's license pursuant to Code section 4301, subdivision (o), in conjunction with CCR section 1714, subdivisions (b) and (c), in that respondent failed to maintain its facilities in October and November 2021 in a clean and orderly condition free from rodents and insects so that drugs are safely and properly prepared, maintained and distributed. (Factual Findings 3-21).

Degree of Discipline

7. The Board's Disciplinary Guidelines (Rev. 2/2017) (Guidelines) describe categories of violations and recommended penalties. Under the Guidelines, the violations under consideration in this case constitute a Category II level of discipline, in that respondent committed a violation with serious potential for harm involving a disregard for public safety and pharmacy laws and regulations which involved a serious failure to ensure sanitation of the premises. (Ex. 30, p. A275-A276.) The minimum recommended penalty is three years of probation; the maximum recommended penalty is revocation. (*Ibid.*)

8. The Guidelines specify that, in determining whether the minimum, maximum or an intermediate penalty is to be imposed in a given case, factors to be

considered include: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings; (5) number and or variety of current violations; (6) the nature and severity of the act(s) or offense(s); (7) aggravating evidence; (8) mitigating evidence; (9) rehabilitation evidence; (10) the time that has elapsed since commission of the act(s) or offenses(s); (11) whether the conduct was intentional or negligent; and (12) financial benefit to the respondent from the misconduct. (Ex. 30, p. A239.)

9. Applying the criteria to the case at hand, respondent's offense in failing to maintain the pharmacy free of rodents and insects in October and November 2021 had a serious potential to harm the public. Consumers who entered the pharmacy could have been exposed to viruses and bacteria as a result of the infestation. There was no evidence of any prior disciplinary record or prior warnings. This involves a single violation over a relatively short time period in October and November 2021.

10. There are several aggravating factors. The rodent infestation was so severe that Pharmacy employees chose to go outside of CVS to file complaints with DPH in order to have the problem addressed. CVS had no policy or procedures to address an infestation and the infestation was the most serious one Inspector Wright had seen.

11. Respondent did present mitigating evidence. It promptly brought in Orkin and True Source to address the infestation and clean up the facility and the infestation appears to have been remediated as of the final Board investigation on November 30, 2021. Since the remediation, nearly two years have elapsed and there was no evidence of a reoccurrence.

///

12. Respondent intentionally remained open despite the serious infestation and financially benefited by staying open, rather than closing while the infestation was ongoing. However, respondent was not ordered to close and appears to have cooperated fully with both the DPH and the Board.

13. Under these circumstances, the public will be adequately protected by placing respondent's license on three years of probation.

Cost Recovery

14. Code section 125.3 allows recovery of the reasonable costs of investigation and prosecution in this matter. The \$10,788.50 incurred is reasonable and cost recovery in that amount shall be ordered.

ORDER

Permit Number 47946 issued to respondent Garfield Beach CVS, LLC, dba CVS Pharmacy # 9649 is revoked; however, the revocation is stayed, and respondent is placed on probation for three years upon the following terms and conditions.

1. Definition: Respondent. For the purposes of these terms and conditions, "respondent" shall refer to Garfield Beach CVS, LLC, dba CVS Pharmacy # 9649. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the Board or its designee shall be made by an

owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

2. 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 substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's Permit or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. 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(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. 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 at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. 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 his probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

6. Reimbursement of Board's 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 \$10,788.50. Respondent shall make said payments in the manner directed by the Board.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

Respondent shall make said payments according to a schedule approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

7. 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 deadlines as directed shall be considered a violation of probation.

8. Status of License. Respondent shall, at all times while on probation, maintain an active, current Permit with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

9. License Surrender While on Probation/Suspension. Following the effective date of this decision, should respondent wish to discontinue business, respondent may tender the premises license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for 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 the premises wall and renewal license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent shall further submit a completed Discontinuance of Business form according to board guidelines and shall notify the Board of the records inventory transfer within five (5) days. Respondent shall further arrange for the transfer of all records of acquisition and disposition of dangerous drugs and/or devices to premises licensed and approved by the Board.

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

Respondent may not apply for any new 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.

Respondent further stipulates that it shall reimburse the Board for its costs of investigation and prosecution in the amount of \$10,788.50 prior to the acceptance of the surrender.

10. Sale or Discontinuance of Business. During the period of probation, should respondent sell, trade or transfer all or part of the ownership of the licensed entity, discontinue doing business under the license issued to respondent, or should practice at that location be assumed by another full or partial owner, person, firm, business, or entity, under the same or a different premises license number, the Board or its designee shall have the sole discretion to determine whether to exercise continuing jurisdiction over the licensed location, under the current or new premises license number, and/or carry the remaining period of probation forward to be applicable to the current or new premises license number of the new owner.

11. Notice to Employees. Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent shall submit written notification to the board, within fifteen (15) days of

the effective date of this decision, that this term has been satisfied. Failure to timely provide such notification to employees, or to timely submit such notification to the board shall be considered a violation of probation.

"Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

12. Owners and Officers; Knowledge of the Law. Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and all of its officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

13. Premises Open for Business. Respondent shall remain open and engaged in its ordinary business as a pharmacy in California for a minimum of 240 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation, unless respondent is informed otherwise in writing by the board or its designee. If respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 240 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 minimum all

of the following: the date(s) and hours respondent was open; the reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on which respondent will resume business as required. Respondent shall further notify the Board in writing with ten (10) days following the next calendar month during which respondent is open and engaged in its ordinary business as a pharmacy in California for a minimum of 240 hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

14. Posted Notice of Probation. Respondent shall prominently post a probation notice provided by the board or its designee in a place conspicuous to and readable by the public within two (2) days of receipt thereof from the Board or its designee. Failure to timely post such notice, or to maintain the posting during the entire period of probation, shall be considered a violation of probation.

Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

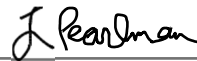
15. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall be automatically extended, until all terms and conditions have been satisfied or the Board has taken other action as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

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, 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.

16. 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: **08/24/2023**



Laurie Pearlman (Aug 24, 2023 16:36 PDT)

LAURIE PEARLMAN

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 DIANA PETIKYAN
Deputy Attorney General
4 State Bar No. 306153
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6193
6 Facsimile: (916) 731-2126
E-mail: Diana.Petikyan@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 7321

12 **GARFIELD BEACH CVS, LLC DBA CVS**
13 **PHARMACY #9649**
14 **33499 Yucaipa Blvd**
15 **Yucaipa, CA 92399**

ACCUSATION

16 **Permit No. PHY 47946**

Respondent.

17 **PARTIES**

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

20 2. On or about September 18, 2006, the Board of Pharmacy issued Permit Number PHY
21 47946 to Garfield Beach CVS, LLC dba CVS Pharmacy #9649 (Respondent). The Permit was in
22 full force and effect at all times relevant to the charges brought herein and will expire on June 1,
23 2023, unless renewed.

24 **JURISDICTION**

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

1 4. Code section 118, subdivision (b), provides that the suspension/ expiration/surrender/
2 cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed
3 with a disciplinary action during the period within which the license may be renewed, restored,
4 reissued or reinstated.

5 5. Code section 4011 states, “The board shall administer and enforce this chapter and
6 the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the
7 Health and Safety Code).”

8 6. Code section 4300 states:

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

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

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

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

16 (4) Revoking his or her license.

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

19 (c) The board may refuse a license to any applicant guilty of unprofessional
20 conduct. The board may, in its sole discretion, issue a probationary license to any
21 applicant for a license who is guilty of unprofessional conduct and who has met all
22 other requirements for licensure. The board may issue the license subject to any terms
23 or conditions not contrary to public policy, including, but not limited to, the following:

24 (1) Medical or psychiatric evaluation.

25 (2) Continuing medical or psychiatric treatment.

26 (3) Restriction of type or circumstances of practice.

27 (4) Continuing participation in a board-approved rehabilitation program.

28 (5) Abstention from the use of alcohol or drugs.

 (6) Random fluid testing for alcohol or drugs.

 (7) Compliance with laws and regulations governing the practice of
pharmacy.

 (d) The board may initiate disciplinary proceedings to revoke or suspend any
probationary certificate of licensure for any violation of the terms and conditions of
probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

 (e) The proceedings under this article shall be conducted in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government

1 Code, and the board shall have all the powers granted therein. The action shall be final,
2 except that the propriety of the action is subject to review by the superior court pursuant
to Section 1094.5 of the Code of Civil Procedure.

3 7. Code section 4300.1 states, “The expiration, cancellation, forfeiture, or suspension of
4 a board-issued license by operation of law or by order or decision of the board or a court of law,
5 the placement of a license on a retired status, or the voluntary surrender of a license by a licensee
6 shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or
7 action or disciplinary proceeding against, the licensee or to render a decision suspending or
8 revoking the license.”

9 8. Code section 4032 states, “‘License’ means and includes any license, permit,
10 registration, certificate, or exemption issued by the board and includes the process of applying for
11 and renewing the same.”

12 **STATUTORY PROVISIONS**

13 9. Code section 4301 states, in pertinent part:

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

16 ...

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

20 ...

21 **REGULATORY PROVISIONS**

22 10. California Code of Regulations, title 16, section 1714, states, in pertinent part:

23 ...

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

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

28 ...

COST RECOVERY

1 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
2 administrative law judge to direct a licensee found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
5 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
6 included in a stipulated settlement.
7

CAUSE FOR DISCIPLINE

(Failure to Maintain Operational Standards – Unsanitary Conditions, Rodent Infestation)

8
9
10 12. Respondents are subject to disciplinary action under Code section 4301, subdivision
11 (o) in conjunction with California Code of Regulations (CCR), title 16, section 1714, subdivisions
12 (b) and (c) in that Respondents failed to maintain operational standards. Specifically,
13 Respondents failed to maintain CVS Pharmacy #9649 in a clean and orderly condition. The
14 circumstances are as follows:

15 13. On or about October 28, 2021, the Board received an online complaint from L.V., an
16 Environmental Health Specialist (EHS) from the Department of Public Health (DPH) in San
17 Bernardino County. L.V. received three separate online complaints regarding CVS #9649 which
18 set out the following details:

19 a. Complaint dated October 25, 2021: “There are lots of rats in the pharmacy and
20 front store and in the lunch room, back room everywhere.”

21 b. Complaint dated October 27, 2021: “Rats in the pharmacy! Unhealthy for all.”

22 c. Complaint dated October 27, 2021: “They have tried to get rid of the problem,
23 but it is still really bad. Orkin says they can’t find the rest. Instead of closing and fumigating
24 they continue to place traps. 3 rats found in pharmacy medication shelves this weekend!!”

25 14. On or about November 9, 2021, a Board inspector, conducted an inspection at CVS
26 Pharmacy #9649 while it was open to the public and actively operating. The inspector confirmed
27 widespread presence of rodents and droppings within the pharmacy. Specifically, his inspection
28 revealed a filthy pharmacy with rodent droppings littering the areas above ceiling tiles in the

1 pharmacy (directly above patient drop-off, medication shelves, medication processing areas,
2 consultation areas, and back pharmacy storage locations). The inspector also observed rodent
3 droppings and cockroach remains in the pharmacy back storage room (an area directly accessible
4 to the pharmacy). During the inspection, Pharmacy Technician C. confirmed to the inspector that
5 he or she recently observed what appeared to be a rat in the break room. The rear storage room
6 also contained rat traps along the walls.

7 15. On or about November 23, 2021, EHS L.V. informed the Board's inspector that the
8 rodent activity persisted in his follow-up inspections (with at least two rodents captured) until
9 approximately November 9, 2021 – when L.V. was able to verify that the facility remedied the
10 rodent issue.

11 16. On or about November 30, 2021, the Board's inspector returned to CVS Pharmacy
12 #9649 for a follow up inspection. He then confirmed that the prior identified areas that contained
13 vermin rat/mice feces no longer showed evidence of infestation.

14 **PRAYER**

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

- 17 1. Revoking or suspending Permit Number PHY 47946, issued to Garfield Beach CVS,
18 LLC dba CVS Pharmacy #9649;
- 19 2. Ordering CVS Pharmacy #9649 to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and,

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

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

DATED: 12/29/2022

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2022.12.29 10:09:05
-08'00'

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

LA2022602183;
65324219.docx