

1 ROB BONTA
Attorney General of California
2 NANCY A. KAISER
Supervising Deputy Attorney General
3 STEPHEN D. SVETICH
Deputy Attorney General
4 State Bar No. 272370
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6306
6 Facsimile: (916) 731-2126
E-mail: Stephen.Svetich@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 7285

14 **ATLAS RX INC. DBA ATLAS**
15 **PHARMACY, NINA ROSE MENART,**
PIC, AND KEVIN RADZINSKY, OWNER

STATEMENT OF ISSUES

16 **Community Pharmacy License Applicant**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about December 9, 2021, the Board received an Application for a Community
24 Pharmacy License (“Application”) from Atlas Rx Inc. (“Respondent”), doing business as Atlas
25 Pharmacy, Nina Rose Menart, PIC, and Kevin Radzinsky (“Radzinsky”), Owner. On or about
26 December 2, 2021, Respondent certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Board denied the application on
28 March 18, 2022.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (“Code”) unless
4 otherwise indicated.

5 4. Section 4111 of the Code states, in pertinent part:

6 (a) Except as otherwise provided in subdivision (b), (d), or (e), the board shall
7 not issue or renew a license to conduct a pharmacy to any of the following:

8 (1) A person or persons authorized to prescribe or write a prescription, as
9 specified in Section 4040, in the State of California.

10 (2) A person or persons with whom a person or persons specified in paragraph
11 (1) shares a community or other financial interest in the permit sought.

12 (3) Any corporation that is controlled by, or in which 10 percent or more of the
13 stock is owned by a person or persons prohibited from pharmacy ownership by
14 paragraph (1) or (2).

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16 **STATUTORY PROVISIONS**

17 5. Section 4035 of the Code states:

18 “Person” includes, but is not limited to, firm, association, partnership,
19 corporation, limited liability company, state governmental agency, trust, or political
20 subdivision.

21 6. Section 4040 of the Code states:

22 (a) “Prescription” means an oral, written, or electronic transmission order that is
23 both of the following:

24

25 (2) Issued by a physician, dentist, optometrist, doctor of podiatric medicine,
26 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is
27 issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-
28 midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this
state, or pursuant to Section 4052.1, 4052.2, or 4052.6 by a pharmacist licensed in
this state.

. . . .

FACTUAL ALLEGATIONS

7. In its Application, Respondent disclosed that Radzinsky is the President, CEO, CFO,
Secretary, sole Director, and 100% shareholder of Respondent. In an Individual Personal

1 Affidavit submitted with the Application, Radzinsky disclosed the identity of his wife, A. R. In a
2 letter dated December 2, 2021, submitted with the Application, signed by both Radzinsky and A.
3 R., Radzinsky disclosed that A. R. is an optometrist, and thus has authority to prescribe
4 medications. The letter states that A. R. has “no vested, beneficial, or financial interest of any
5 kind in the above-mentioned business.” In another undated letter submitted as part of the
6 Application, Radzinsky disclosed that he has a joint account with A. R. at Bank of America
7 (“Joint BOA Account”).

8 8. Radzinsky received a loan of \$200,000 prior to submitting the Application. The
9 promissory note for this loan does not state it is for Radzinsky to open a pharmacy. The loan was
10 made directly to Radzinsky, not to Respondent. Radzinsky deposited the funds from this loan
11 into the Joint BOA Account. Radzinsky used funds from the Joint BOA account to fund
12 Respondent’s account with \$100,000.

13 9. On February 9, 2022, the Board sent a letter to Respondent informing Respondent
14 that it was unable to grant Respondent’s Application due to the proposed ownership structure of
15 Respondent. Specifically, the letter stated that “the spouse of the 100% owner of the corporation
16 has been identified as a prescriber.” The letter further stated that the proposed ownership of the
17 pharmacy is prohibited under section 4111 of the Code since “the applicant-owner’s spouse must
18 also be compliant with [Code section] 4111.” The Board gave Respondent 30 days to propose a
19 different ownership structure that would comply with section 4111 of the Code.

20 10. On February 21, 2022, Respondent and A. R. entered into a Post-Nuptial Property
21 Agreement. This Post-Nuptial Agreement states the following:

22 [Radzinsky’s] ownership interest in [Respondent] that might otherwise have
23 been construed under the laws of the State of California to be the parties’ community
24 property belonging equally to each of them is [Radzinsky’s] separate property. This
25 includes, but is not limited to, earnings resulting from the efforts of [Radzinsky] on
26 behalf of [Respondent], assets acquired with such earnings, increased values in
27 separate property resulting from the application of such earnings, or from the efforts
28 of [Radzinsky] during the marriage; and certain assets or interests acquired by loan or
extension of credit during the marriage.

. . . . [Radzinsky] and [A. R.] further acknowledge and agree that even though the
expenditure of [Radzinsky’s] personal time, skill, service, industry and effort might
constitute or create a community property interest, community property income or
community property asset in the absence of this Agreement, no such community

1 property interest, income or asset shall be created thereby, and any income, profits,
2 accumulations, appreciation and increase in value of [Respondent] during the
marriage shall be and shall remain entirely the separate property of [Radzinsky].

3 [Radzinsky] and [A. R.] agree that [Radzinsky] shall retain and enjoy sole and
4 exclusive management and control of his ownership interest in [Respondent] as
5 though unmarried. In order to accomplish the intent of this Agreement, [A. R.] agrees
6 to execute, acknowledge and deliver, at [Radzinsky's] request, any and all such
7 releases, assignments or other instruments, and such further assurances as may be
reasonably required or requested to effect or evidence the release, waiver,
8 relinquishment or extinguishment of the right of [A. R.] in [Respondent] under the
9 provisions of this Agreement, and to assure that [Radzinsky] shall have sole and
10 exclusive management and control of his ownership interest in [Respondent].

11 Any obligations owed by [Radzinsky] through [Respondent] shall remain his
12 separate obligations. All obligations (including principal and income) incurred due to,
13 or as a consequence of, the purchase, encumbrance or hypothecation of [Respondent],
14 whether real, personal or mixed, and all taxes, insurance premiums and maintenance
15 costs of such separate property, shall be paid from [Radzinsky's] separate property
16 income or from [Radzinsky's] separate property funds, at his election, and [A. R.]
17 shall not be liable for any of these separate obligations of [Radzinsky], and
18 [Radzinsky] shall indemnify and hold [A. R.] harmless from them.

19 If community property funds are used to pay, reduce or contribute to a separate
20 obligation of [Respondent], the community shall acquire no interest in [Respondent]
21 to which any such separate obligation relates, and the community shall be entitled
22 only to reimbursement of the funds so used (without interest) upon the sale of
23 [Respondent] or any of its assets.

24 11. On March 18, 2022, the Board sent a letter to Respondent informing Respondent that
25 the Application was denied. The denial letter states the following:

26 Transmutation or post-nuptial agreements between spouses are generally effective as
27 to community or separate property interests of the spouses upon the dissolution of
28 marriage or death of one or both spouses. However, the 'community or financial
interest' referenced in [Code] section 4111, subdivision (a)(2), is not exclusive to
marital property. Spouses contract toward each other obligations of mutual respect,
fidelity, and support. (Fam. Code section 720.) Even if the specific pharmacy
property is transmuted or agreed between the spouses to be separate property of one
spouse, that agreement does not remove the community or financial interests between
the spouses while they are still married.

There are significant public protection and policy reasons for this law, including
removing conflicts of interest from the prescriber and the pharmacy. When the
prescriber is determining which drug to prescribe, the amount of the drug to
prescribe, and other factors considered when writing a prescription, they should not
also be thinking about the financial impact to their spouse's pharmacy. Additionally,
the pharmacy has a duty to exercise its corresponding responsibility to ensure that
prescriptions have a legitimate medical purpose.

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CAUSE FOR DENIAL OF APPLICATION

(Prohibited Ownership Structure)

12. Respondent's application is subject to denial under sections 4035, 4040, and 4111 in that the proposed ownership of Respondent results in the prescriber spouse of the 100% shareholder of Respondent having a community or other financial interest in the permit sought. The spouse of Radzinsky (Respondent's 100% shareholder and owner), is a person authorized to prescribe under Code section 4040. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 7 through 11, inclusive, as though set forth fully herein.

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. Denying the application of Atlas Rx Inc., doing business as Atlas Pharmacy, Nina Rose Menart, PIC, and Kevin Radzinsky, Owner for a Community Pharmacy Permit License;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 5/4/2022

Signature on File

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

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