

1 XAVIER BECERRA
Attorney General of California
2 KAREN R. DENVER
Supervising Deputy Attorney General
3 KATELYN E. DOCHERTY
Deputy Attorney General
4 State Bar No. 322028
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6277
Facsimile: (916) 327-8643
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. 7028

14 **MEDS IN MOTION, LLC; DANIEL K.**
15 **RICHARDS, PRESIDENT &**
PHARMACIST-IN-CHARGE

STATEMENT OF ISSUES

16 **Nonresident Pharmacy Applicant**

17 Respondent.
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21 **PARTIES**

- 22 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about July 22, 2020, the Board of Pharmacy, Department of Consumer Affairs
25 received an application for an Nonresident Pharmacy Applicant from Meds in Motion, LLC;
26 Daniel Richards, President and Pharmacist-in-Charge (Respondent). On or about July 1, 2020,
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1 Daniel Richards certified under penalty of perjury to the truthfulness of all statements, answers,
2 and representations in the application. The Board denied the application on August 18, 2020.

3 **JURISDICTION**

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

7 **STATUTORY PROVISIONS**

8 4. Section 4300 of the Code states, in pertinent part:

9 ...

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

- 16 (1) Medical or psychiatric evaluation.
- 17 (2) Continuing medical or psychiatric treatment.
- 18 (3) Restriction of type or circumstances of practice.
- 19 (4) Continuing participation in a board-approved rehabilitation program.
- 20 (5) Abstention from the use of alcohol or drugs.

21 5. Section 4301 of the Code states, in pertinent part:

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

25 ...

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

28 ...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or
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,
including regulations established by the board or by any other state or federal
regulatory agency.

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6. Code section 4303, subdivision (b), states:

The board may cancel, deny, revoke, or suspend a nonresident pharmacy registration, issue a citation or letter of admonishment to a nonresident pharmacy, or take any other action against a nonresident pharmacy that the board may take against a resident pharmacy license, on any of the same grounds upon which such action might be taken against a resident pharmacy, provided that the grounds for the action are also grounds for action in the state in which the nonresident pharmacy is permanently located.

7. Code section 477, subdivision (b), states that a “license” includes “certificate”, “registration” or other means to engage in a business or profession.

8. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a -----," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Code section 4112 states, in pertinent part:

(a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state shall be considered a nonresident pharmacy.

(b) A person may not act as a nonresident pharmacy unless he or she has obtained a license from the board. The board may register a nonresident pharmacy that is organized as a limited liability company in the state in which it is licensed.

....

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section . . .

10. Code section 4127.2, subdivision (a), states that “[a] nonresident pharmacy shall not compound injectable sterile drug products for shipment into the State of California without a license issued by the board pursuant to this section. The license shall be renewed annually and shall not be transferable”.

1 11. Code section 4127.3, subdivision (a), states:

2 Whenever the board has a reasonable belief, based on information
3 obtained during an inspection or investigation by the board, that a pharmacy
4 compounding injectable sterile drug products poses an immediate threat to the public
5 health or safety, the executive officer of the board may issue an order to the pharmacy
6 to immediately cease and desist from compounding injectable sterile drug products.
7 The cease and desist order shall remain in effect for no more than 30 days or the date
8 of a hearing seeking an interim suspension order, whichever is earlier.

9 12. Health and Safety Code section 109970 states:

10 "Manufacture" means the preparation, compounding, propagation,
11 processing, or fabrication of any food, drug, device, or cosmetic. The term
12 "manufacture" includes repackaging or otherwise changing the container, wrapper, or
13 labeling of any food, drug, device, or cosmetic in furtherance of the distribution of the
14 food, drug, device, or cosmetic. The term "manufacture" does not include
15 repackaging from a bulk container by a retailer at the time of sale to its ultimate
16 consumer.

17 **COST RECOVERY**

18 13. Code section 125.3 provides, in pertinent part, that a Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 **CAUSE FOR DENIAL OF APPLICATION**

23 **(Violations of the Pharmacy Law or of Applicable State Laws Governing Pharmacy)**

24 14. Respondent's application is subject to denial under Code section 4301, subdivision (j)
25 and (o), for unprofessional conduct, in that Respondent violated or attempted to violate, directly
26 or indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq.) or of
27 the applicable state laws governing pharmacy, as follows:

28 a. On and between January 1, 2018, and July 27, 2020, Respondent shipped over 38,900
prescription medications, including controlled substances, dangerous drugs, and high-risk
compounded drugs, into the State of California to patients, without holding a nonresident
pharmacy license issued by the Board, in violation of Code section 4112, subdivision (a) and (b).

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