STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF PHARMACY

IN RE:	**) Docket Nos.**
Walgreen Company and	**) 2022-98**
Walgreens Stores:	**)**
#11526 (Farrell St) Lic. No. 038.0074574	**) 2022-99, 2022-100**
#01756, License No. 038.0003345	**) 2022-101, 2022-102**
#07270, License No. 038.0003340	**) 2022-103, 2022-104, 2022-105, 2022-106, 2022-107**
#17183, License No. 038.0134028	**) 2022-108, 2022-109**
#17185, License No. 038.0134018	**) 2022-110, 2022-111, 2022-112, 2022-113**
#17379, License No. 038.0134037	**) 2022-114, 2022-115, 2022-116, 2022-117, 2022-118,) 2022-119**
#17447, License No. 038.0134025	**) [no specific docket no.]**
#17471, License No. 038.0134042	**) 2022-120, 2022-121, 2022-122, 2022-123, 2022-124,) 2022-125, 2022-126**
#17475, License No. 038.0134027	**) [no specific docket no.]**
#17485, License No. 038.0134026	**) [no specific docket no.]**
#17518, License No. 038.0134012	**) 2022-127, 2022-128**
#17596, License No. 038.0134041	**) 2022-129**
#17625, License No. 038.0134019	**) 2022-130, 2022-131, 2022-132**
#17631, License No. 038.0134023	**) 2022-133**
#17713, License No. 038.0134021	**) 2022-134**
#17747, License No. 038.0134013	**) [no specific docket no.]**
#17749, License No. 038.0134030	**) 2022-135, 2022-136**
#18020, License No. 038.0134036	**) 2022-137, 2022-138, 2022-139, 2022-140, 2022-141,) 2022-142, 2022-143**
#18043, License No. 038.0134020	**) [no specific docket no.]**
#18090, License No. 038.0134017	**) 2022-144, 2022-145, 2022-146, 2022-147**
#18265, License No. 038.0134015	**) 2022-148**
#18278, License No. 038.0134031	**) 2022-149**
#18325, License No. 038.0134033	**) 2022-150**
#18354, License No. 038.0134038	**) [no specific docket no.]**
#18375, License No. 038.0134016	**) [no specific docket no.]**
#18418, License No. 038.0134034	**) 2022-151, 2022-152, 2022-153, 2022-154, 2022-155,) 2022-156, 2022-157, 2022-158**
#18977, License No. 038.0134013	**) 2022-159, 2022-160**
#19233, License No. 038.0134022	**) 2022-161, 2022-162, 2022-163, 2022-164**
#19346, License No. 038.0134029	**) [no specific docket no.]**
#19449, License No. 038.0134024	**) [no specific docket no.]**
#19570, License No. 038.0134040	**) [no specific docket no.]**
#19795, License No. 038.0134032	**) 2022-165, 2022-166, 2022-167**

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STATE'S OPPOSITION TO RESPONDENTS' REQUEST FOR STAY TO FILE AN ANSWER

NOW COMES the State of Vermont, by and through Prosecuting Attorney Jennifer Colin, and hereby opposes Respondents' request for stay to file an Answer for the reasons stated in the following Memorandum of Law.

MEMORANDUM OF LAW

The State filed its Specification of Charges in this matter on June 21, 2022. The Docket Clerk served Respondents on June 23, 2022. Per OPR Administrative Rule of Practice ("ARP") 3.3, Respondents' Answer was due on or before July 13, 2022. In early July, Respondents filed a letter with the Docket Clerk seeking an extension of time "to determine the facts and provide a full and accurate response to each of the charges." The State agreed to Respondents' request, and the ALO ordered an extension for Respondents to file their Answer on or before August 20, 2022. On August 18, 2022, Respondents filed a lengthy Motion to Dismiss some of the charges instead of an Answer. In their Motion, Respondents primarily seek dismissal of charges against Walgreen Co. brought under 26 V.S.A. §2053, claiming, among other arguments, the Vermont statute violates the U.S. Constitution. Respondent is not seeking dismissal of all violations alleged against the 32 Walgreens locations under 3 V.S.A. §129a(a)(3) and the Administrative Rules of the Board of Pharmacy.

Accompanying its Motion to Dismiss, Respondents filed a letter with the Docket Clerk requesting a stay of the Answer deadline until 30 days after a decision on the Motion to Dismiss is entered. Respondents cite no legal authority for the request but assert that a stay of the Answer deadline "would preserve resources and not delay adjudication…as Walgreens' motion may resolve almost all of the Charges." The State opposes Walgreens' request.

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OPR Administrative Rule of Practice 3.3 requires that Respondent's Answer provide substantive responses to each numbered specification **and** a brief statement of any defense Respondent plans to assert:

> The Respondent must file an answer to the charges with the Director within 20 days of the date on which the notice of charges was mailed by the Director. **The answer must include**:
> (A) **a response concerning the substance of each of the numbered specifications in the charges**, either admitting or denying each of the specifications. If the respondent is without knowledge or information sufficient to form a belief as to the truth of any specification, the respondent must so state, and this has the effect of a denial. When the respondent intends in good faith to deny only part of a specification, he or she must specify so much of it as is true and must deny only the remainder.
> (B) **A brief statement of the legal and factual basis of any defense that the respondent intends to offer.**

ARP 3.3 (Emphasis added). The mandatory language requiring an Answer to include both the factual responses and any legal or factual defenses serves the important function of expediency that OPR's administrative processes are designed to promote. The Administrative Rules of Practice do not permit a stay of filing an Answer. The sole reference to a stay in the Administrative Rules of Practice is made in Part 4 "Appeal" under Section 4.1(B), which provides that any request for a stay of proceedings pending an appeal filed in Superior Court shall be made to Washington Superior Court.

Secondly, Walgreens has already had additional time, almost eight weeks, to, in its own words, "determine the facts and provide a full and accurate response to each of the charges." The filing of Walgreens' Answer has already been delayed to allow Respondents adequate time to gather facts and respond substantively to each of the specifications. Walgreens' Motion to Dismiss does not seek dismissal of all charges, so irrespective of the outcome of the motion, the case will proceed. Furthermore, it is highly unlikely that the Motion to Dismiss will be granted, as such motions are disfavored under Vermont law. The Administrative Rule of Practice "shall be liberally construed to secure the just and timely determination of all issues

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presented to a hearing authority." ARP 2.5. Any further delay for Walgreens to respond to the substance of the Specification of Charges would not be in the interest of justice and would unnecessarily delay the proceedings.

WHEREFORE, the State respectfully requests that the ALO deny Respondents' request for a stay to file their Answer.

DATED this 22nd day of August, 2022.

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SECRETARY OF STATE

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