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

11 In the Matter of the Accusation Against:

Case Nos. 4981 and 5328

12 **GEE'S HEALTHCARE PHARMACY, INC.,**
13 **DBA CABRILLO PARK PHARMACY**
2212 East 4th Street #102
14 Santa Ana, CA 92705

FIRST AMENDED ACCUSATION

15 Pharmacy Permit No. PHY 50066

16 **GEE'S HEALTHCARE PHARMACY, INC.,**
17 **DBA YORBA PARK PHARMACY**
2501 E. Chapman Blvd., No. 106
18 Orange, CA 92869

19 Pharmacy Permit No. PHY 45771

20 **JAMES YING-MING GEE**
220 Tall Oak
21 Irvine, CA 92603

22 Pharmacist License No. RPH 44796

23 **SOONG OK CHANG**
6901 East Rutgers Drive
24 Anaheim Hills, CA 92807

25 Pharmacist License No. RPH 45540
26
27
28

1 ANH NGOC PHAN
2 11701 Steele Dr.
3 Garden Grove, CA 92840

4 Pharmacist License No. RPH 42197

5 Respondents.
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8 Complainant alleges:

9 **PARTIES**

10 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
11 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
12 Affairs.

13 2. On or about April 16, 2002, the Board of Pharmacy issued Pharmacy Permit Number
14 PHY 45771 to Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy
15 (Respondent Yorba Park Pharmacy). From April 16, 2002 through the present, Respondent
16 James Gee has been the President and fifty percent owner of Respondent Yorba Park Pharmacy.
17 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought
18 herein and will expire on April 1, 2015, unless renewed.

19 3. On or about September 1, 2009, the Board of Pharmacy issued Pharmacy Permit
20 Number PHY 50066 to Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo Park
21 Pharmacy (Respondent Cabrillo Park Pharmacy). From September 1, 2009, Respondent James
22 Gee has been the President and fifty percent owner of Cabrillo Park Pharmacy. The Pharmacy
23 Permit was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 1, 2015, unless renewed.

25 4. On or about August 26, 1991, the Board of Pharmacy issued Pharmacist License
26 Number RPH 44796 to James Ying-Ming Gee (Respondent James Gee.) The Pharmacist License
27
28

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 April 30, 2015, unless renewed.

3 5. On or about August 14, 1992, the Board of Pharmacy issued Pharmacist License
4 Number RPH 45540 to Soong OK Chang (Respondent Soong Chang.) The Pharmacist License
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 September 30, 2015, unless renewed.

7 6. On or about September 20, 1988, the Board of Pharmacy issued Pharmacist License
8 Number RPH 42197 to Anh Ngoc Phan (Respondent Anh Phan.) The Pharmacist License was in
9 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
10 2016, unless renewed.

11 JURISDICTION

12 7. This First Amended Accusation is brought before the Board of Pharmacy (Board),
13 Department of Consumer Affairs, under the authority of the following laws. All section
14 references are to the Business and Professions Code unless otherwise indicated.

15 8. Section 4011 of the Code provides that the Board shall administer and enforce both
16 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
17 Act [Health & Safety Code, § 11000 et seq.].

18 9. Section 4300(a) of the Code provides that every license issued by the Board may be
19 suspended or revoked.

20 10. Section 4300.1 of the Code states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued license
22 by operation of law or by order or decision of the board or a court of law, the
23 placement of a license on a retired status, or the voluntary surrender of a license by a
24 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

25 STATUTORY AND REGULATORY PROVISIONS

26 11. Section 4081 of the Code states in pertinent part:

27 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
28 drugs or dangerous devices shall be at all times during business hours open to
inspection by authorized officers of the law, and shall be preserved for at least

1 three years from the date of making. A current inventory shall be kept by every
2 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
3 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
4 or establishment holding a currently valid and unrevoked certificate, license,
5 permit, registration, or exemption under Division 2 (commencing with Section
6 1200) of the Health and Safety Code or under Part 4 (commencing with Section
7 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
8 of dangerous drugs or dangerous devices.

9 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
10 food-animal drug retailer shall be jointly responsible, with the
11 pharmacist-in-charge or representative-in-charge, for maintaining the records and
12 inventory described in this section.

13 12. Section 4301 of the Code 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 procured by fraud or
16 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
17 not limited to, any of the following:

18 ...
19 (d) The clearly excessive furnishing of controlled substances in violation of
20 subdivision (a) of Section 11153 of the Health and Safety Code.

21 ...
22 (j) The violation of any of the statutes of this state, or any other state, or of the
23 United States regulating controlled substances and dangerous drugs....

24 ...
25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
26 abetting the violation of or conspiring to violate any provision or term of this chapter
27 or of the applicable federal and state laws and regulations governing pharmacy,
28 including regulations established by the board or any other state or federal regulatory
agency.

29 ...
30 13. Section 4113(c) of the Code states:

31 The pharmacist-in-charge shall be responsible for a pharmacy's compliance
32 with all state and federal laws and regulations pertaining to the practice of pharmacy.

33 14. Section 4306.5 of the Code states, in pertinent part:

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

35 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
36 his or her education, training, or experience as a pharmacist, whether or not the act
37 or omission arises in the course of the practice of pharmacy or the ownership,
38 management, administration, or operation of a pharmacy or other entity licensed by

1 the board.

2 Acts or omissions that involve, in whole or in part, the failure to consult
3 appropriate patient, prescription, and other records pertaining to the performance of
4 any pharmacy function.

5 ...
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11 15. Section 4307(a) of the Code states that:

12 Any person who has been denied a license or whose license has been revoked
13 or is under suspension, or who has failed to renew his or her license while it was
14 under suspension, or who has been a manager, administrator, owner member, officer,
15 director, associate, or partner of any partnership, corporation, firm, or association
16 whose application for a license has been denied or revoked, is under suspension or
17 has been placed on probation, and while acting as the manager, administrator, owner,
18 member, officer, director, associate, or partner had knowledge or knowingly
19 participated in any conduct for which the license was denied, revoked, suspended, or
20 placed on probation, shall be prohibited from serving as a manager, administrator,
21 owner, member, officer, director, associate, or partner of a licensee as follows:

22 (1) Where a probationary license is issued or where an existing license is placed
23 on probation, this prohibition shall remain in effect for a period not to exceed five
24 years.

25 (2) Where the license is denied or revoked, the prohibition shall continue until
26 the license is issued or reinstated.

27 16. Health and Safety Code section 11153(a) states:

28 A prescription for a controlled substance shall only be issued for a legitimate
medical purpose by an individual practitioner acting in the usual course of his or her
professional practice. The responsibility for the proper prescribing and dispensing of
controlled substances is upon the prescribing practitioner, but a corresponding
responsibility rests with the pharmacist who fills the prescription. Except as
authorized by this division, the following are not legal prescriptions: (1) an order
purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the course
of professional treatment or as part of an authorized narcotic treatment program, for
the purpose of providing the user with controlled substances, sufficient to keep him
or her comfortable by maintaining customary use.

...
23 17. Section 1707.3 of title 16, California Code of Regulations states:

24 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a
25 patient's drug therapy and medication record before each prescription drug is
26 delivered. The review shall include screening for severe potential drug therapy
27 problems.

28 18. Section 1714(b) of title 16, California Code of Regulations states:

Each pharmacy licensed by the board shall maintain its facilities, space, fixtures,
and equipment so that drugs are safely and properly prepared, maintained, secured

1 and distributed. The pharmacy shall be of sufficient size and unobstructed area to
2 accommodate the safe practice of pharmacy.

3 19. Section 1715.6 of title 16, California Code of Regulations states:

4 The owner shall report to the Board within thirty (30) days of discovery of any
5 loss of the controlled substances, including their amounts and strengths.

6 20. Section 1716 of title 16, California Code of Regulations states:

7 Pharmacists shall not deviate from the requirements of a prescription except
8 upon the prior consent of the prescriber or to select the drug product in accordance
9 with Section 4073 of the Business and Professions Code.

10 Nothing in this regulation is intended to prohibit a pharmacist from exercising
11 commonly accepted pharmaceutical practice in the compounding or dispensing of a
12 prescription.

13 21. Section 1718 of title 16, California Code of Regulations states:

14 "Current Inventory" as used in Section 4081 and 4332 of the Business and
15 Professions Code shall be considered to include complete accountability for all
16 dangerous drugs handled by every licensee enumerated in Section 4081 and 4332.

17 The controlled substances inventories required by Title 21, CFR, Section 1304
18 shall be available for inspection upon request for at least three years.

19 22. Section 1761 of title 16, California Code of Regulations states:

20 (a) No pharmacist shall compound or dispense any prescription which contains
21 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
22 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to
23 obtain the information needed to validate the prescription.

24 (b) Even after conferring with the prescriber, a pharmacist shall not compound
25 or dispense a controlled substance prescription where the pharmacist knows or has
26 objective reason to know that said prescription was not issued for a legitimate
27 medical purpose.

28 COST RECOVERY

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

1 DRUGS

2 24. Dilaudid is the brand name for hydromorphone, a Schedule II controlled substance
3 pursuant to Health and Safety Code section 11054(b)(J) and a dangerous drug pursuant to
4 Business and Professions Code section 4022.

5 25. Norco is the brand name for hydrocodone/acetaminophen, a Schedule III controlled
6 substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
7 to Business and Professions Code section 4022.

8 26. Opana is the brand name for oxymorphone hydrochloride, a Schedule II controlled
9 substance pursuant to Health and Safety Code section 11054(b)(N) and a dangerous drug pursuant
10 to Business and Professions Code section 4022.

11 27. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
12 section 11054(b)(M) and a dangerous drug pursuant to Business and Professions Code section
13 4022.

14 28. Phenergan with Codeine is the brand name for promethazine with codeine, a
15 Schedule V controlled substance pursuant to Health and Safety Code section 111058(c)(1) and is
16 a dangerous drug pursuant to Business and Professions Code section 4022.

17 29. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
18 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 FACTUAL ALLEGATIONS

21 30. From April 16, 2002 through the present, Respondent James Gee was the Pharmacist-
22 in-Charge of Respondent Yorba Park Pharmacy. From September 1, 2009 through the present,
23 Respondent James Gee was the Pharmacist-in-Charge of Respondent Cabrillo Park Pharmacy.
24 From September 2012 through January 2013, Respondent Soong Chang was a staff pharmacist at
25 Respondent Cabrillo Park Pharmacy. From June 21, 2012 through November 19, 2013,
26 Respondent Soong Chang was also a staff pharmacist at Respondent Yorba Park Pharmacy.
27 From June 21, 2012 through November 19, 2013, Respondent Anh Phan was a staff pharmacist at
28 Respondent Yorba Park Pharmacy.

1 31. Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang filled
2 prescriptions for controlled substances which were written by Dr. M.S. from September 24, 2012
3 through January 11, 2013. Dr. M.S.'s address was listed on the prescriptions filled by
4 Respondents as being 53 miles away from Respondent Cabrillo Park Pharmacy. Respondent
5 Cabrillo Park Pharmacy was an average of 65 miles (one way) from the patients' addresses listed
6 on prescriptions written by Dr. M.S. who had a general practice with a secondary practice in
7 pediatrics and did not specialize in pain management. Patients paid for the controlled substance
8 prescriptions in cash at Respondent Cabrillo Park Pharmacy and did not seek reimbursement from
9 an insurance company or government agency. Patients filled prescriptions for controlled
10 substances prescribed by multiple physicians during the same time frame at multiple pharmacies.

11 32. Respondents Yorba Park Pharmacy, James Gee, Soong Chang and filled prescriptions
12 for controlled substances which were written by Dr. M.S. from June 21, 2012 through November
13 19, 2013. Dr. M.S.'s address was listed on the prescriptions filled by Respondents as being 51
14 miles away from Respondent Yorba Park Pharmacy. Respondent Yorba Park Pharmacy was an
15 average of 55 miles (one way) from the patients' addresses listed on prescriptions written by Dr.
16 M.S. who had a general practice with a secondary practice in pediatrics and did not specialize in
17 pain management. Patients paid for the controlled substance prescriptions in cash at Respondent
18 Yorba Park Pharmacy and did not seek reimbursement from an insurance company or
19 government agency. Patients filled prescriptions for controlled substances prescribed by multiple
20 physicians during the same time frame at multiple pharmacies.

21 33. Dr. M.S.'s prescriptions for controlled substances were written in an identical fashion
22 for multiple patients as follows: (1) hydrocodone/APAP 10/325, with directions to take 1-2
23 tablets three times a day in a quantity of 90-100; (2) alprazolam 2 mg with directions to take 1
24 tablet three times a day in a quantity of 90; and (3) oxycodone 30mg with directions to take 1
25 tablet three times a day in a quantity of 90. There was no adjustment in the prescribing pattern
26 for sex, age, weight, renal or hepatic function, race, diagnosis, past medications used or any other
27 patient related factor. None of the "chronic pain patients" being treated by Dr. M.S. were
28 receiving a long acting pain medication to control their baseline pain. Certain prescriptions filled

1 by Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang were not signed by Dr.
2 M.S. and other prescriptions were filled by them even though they were signed by a physician
3 who was not the prescribing physician.

4 34. Additionally, drivers picked up the controlled substances for multiple patients from
5 Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang, rather than the patients
6 themselves picking up their prescriptions. Respondents Cabrillo Park Pharmacy, James Gee and
7 Soong Chang did not possess written authorization allowing those drivers to pick up the
8 controlled substance prescriptions for patients. To facilitate the drug transactions with the
9 drivers, Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang kept envelopes
10 which contained prescriptions for controlled substances to be filled, next to the cash register.
11 Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang telephoned the drivers to
12 initiate a pick up when they had filled all the multiple prescriptions for controlled substances. In
13 that same drawer, Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang kept a
14 pricing sheet for controlled substances and the telephone numbers of the drivers to further
15 facilitate these drug transactions with the drivers.

16 35. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee placed
17 orders for suspiciously large amounts of controlled substances with their drug wholesalers.
18 Notwithstanding those orders, Respondents Cabrillo Park Pharmacy and James Gee did not
19 dispense all the prescriptions for controlled substances in a timely manner as prescribed, because
20 they sought to avoid charges that they were excessively prescribing controlled substances from
21 the Drug Enforcement Administration and the Board.

22 36. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy, James Gee, Soong
23 Chang and Anh Phan did not follow proper procedures for verifying if a prescription for a
24 controlled substance was written for a legitimate medical purpose. Indeed, Respondents Cabrillo
25 Park Pharmacy, Yorba Park Pharmacy, James Gee, Soong Chang and Anh Phan dispensed
26 prescriptions to patients who had lost their wallets or social security cards and had been victims
27 of identity theft. And, Respondents' furnishings of controlled substances was higher than
28 neighboring pharmacies during the same time frame.

1 37. On or about February 6, 2014, Dr. M.S. was arrested for violating Business and
2 Professions Code section 2052(b), Health and Safety Code section 11353(a), 11353(c) and 11354.
3 On or about February 10, 2014, a felony Complaint was filed against Dr. M.S. for violating those
4 code sections, among other violations.

5 38. Respondents Cabrillo Park Pharmacy and James Gee also had discrepancies in their
6 drug inventory. From June 2012 through January 2013, Respondents Cabrillo Park Pharmacy and
7 James Gee suffered the following losses of controlled substances: 734 tablets of
8 hydrocodone/APAP 10mg/325mg and 20 tablets of hydromorphone 4mg. They did not report
9 those losses to the Board.

10 39. Respondents Cabrillo Park Pharmacy and James Gee's inventory contained overages
11 of 165 tablets of alprazolam 2mg and 152 tablets of oxycodone 30mg. Therefore, they did not
12 maintain complete records of acquisition for those controlled substances.

13 40. Respondents Yorba Park Pharmacy and James Gee also had discrepancies in their
14 drug inventory. From January 31, 2013 through December 3, 2013, Respondents Yorba Park
15 Pharmacy and James Gee suffered the following losses of controlled substances: 6,332 tablets of
16 alprazolam 2mg, 44,111 tablets of oxycodone 30mg, 14,183 of hydrocodone/APAP 10mg/325mg
17 and 49,855mls or 105 pints (bottles) of promethazine with codeine. They did not report those
18 losses to the Board until prompted to do so by a Board inspector.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Maintain Current Inventory of Controlled Substance against Respondents**

21 **Yorba Park Pharmacy, Cabrillo Park Pharmacy and James Gee)**

22 41. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee are
23 subject to disciplinary action under Code section 4301(o), for violating title 16, California Code
24 of Regulations, section 1718, in that they did not maintain a current inventory of controlled
25 substances, alprazolam, oxycodone, hydrocodone/APAP and hydromorphone, and suffered losses
26 in their inventory of alprazolam, oxycodone, hydrocodone/APAP, hydromorphone and
27 promethazine with codeine, as set forth in paragraphs 30 through 40 above, which are
28 incorporated herein by reference.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failing to Comply with Corresponding Responsibility**

3 **for Legitimate Controlled Substance Prescriptions against Respondents)**

4 45. Respondents are subject to disciplinary action under Code section 4301(j), for
5 violating Health and Safety Code section 11153(a), in that they failed to comply with their
6 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
7 medical purpose when Respondents furnished prescriptions for controlled substances even though
8 "red flags" were present, indicating those prescriptions were not issued for a legitimate medical
9 purpose, as set forth in paragraphs 30 through 40 above, which are incorporated herein by
10 reference.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Clearly Excessive Furnishing of Controlled Substances against Respondents)**

13 46. Respondents are subject to disciplinary action under Code section 4301(d), for the
14 clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section
15 11153 of the Health and Safety Code, as set forth in paragraphs 30 through 40 above, which are
16 incorporated herein by reference.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
19 **Irregularities, Uncertainties, Ambiguities or Alterations against Respondents)**

20 47. Respondents are subject to disciplinary action under Code section 4301(o), for
21 violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed
22 prescriptions for controlled substances, which contained significant errors, omissions,
23 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 30 through 40
24 above, which are incorporated herein by reference.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct against Respondents)**

3 51. Respondents are subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that they engaged in the activities described in paragraphs 30 through
5 40 above, which are incorporated herein by reference.

6 **OTHER MATTERS**

7 52. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
8 Numbers PHY 45771 issued to Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park
9 Pharmacy and PHY 50066 issued to Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo
10 Park Pharmacy, Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy and
11 Cabrillo Park Pharmacy shall be prohibited from serving as a manager, administrator, owner,
12 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
13 Numbers PHY 45771 and PHY 50066 are placed on probation or until Pharmacy Permit
14 Numbers PHY 45771 and PHY 50066 are reinstated if they are revoked.

15 53. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
16 Numbers PHY 45771 issued to Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park
17 Pharmacy and PHY 50066 issued to Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo
18 Park Pharmacy while James Ying-Ming Gee has been an officer and owner and had knowledge
19 of or knowingly participated in any conduct for which the licensee was disciplined, James Ying-
20 Ming Gee shall be prohibited from serving as a manager, administrator, owner, member, officer,
21 director, associate, or partner of a licensee for five years if Pharmacy Permit Numbers PHY
22 45771 and PHY 50066 are placed on probation or until Pharmacy Permit Numbers PHY 45771
23 and PHY 50066 are reinstated if they are revoked.

24 54. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
25 No. RPH 44796 issued to James Ying-Ming Gee, James Ying-Ming Gee shall be prohibited from
26 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
27 licensee for five years if Pharmacist License Number RPH 44796 is placed on probation or until
28 Pharmacist License Number RPH 44796 is reinstated if it is revoked.

1 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Numbers
2 PHY 45771 and PHY 50066 are placed on probation or until Pharmacy Permit Numbers PHY
3 45771 and PHY 50066 are reinstated if Pharmacy Permit Numbers 45771 and 5006 issued to
4 Gee's Healthcare Pharmacy, Inc. doing business as Cabrillo Park Pharmacy and Yorba Park
5 Pharmacy are revoked;

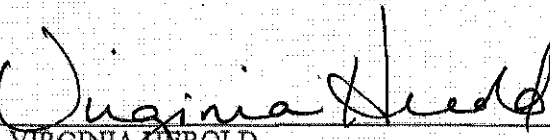
6 7. Prohibiting James Ying-Ming Gee from serving as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
8 Numbers PHY 45771 and PHY 50066 are placed on probation or until Pharmacy Permit
9 Numbers PHY 45771 and PHY 50066 are reinstated if Pharmacy Permit Numbers 45771 and
10 5006 issued to Gee's Healthcare Pharmacy, Inc. doing business as Cabrillo Park Pharmacy and
11 Yorba Park Pharmacy are revoked;

12 8. Prohibiting James Ying-Ming Gee from serving as a manager, administrator, owner,
13 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
14 Number RPH 44796 is placed on probation or until Pharmacist License Number RPH 44796 is
15 reinstated if Pharmacist License Number RPH 44796 issued to James Ying-Ming Gee is
16 revoked;

17 9. Ordering Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo Park
18 Pharmacy, Ordering Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy
19 James Ying-Ming Gee, Soong OK Chang and Anh Ngoc Phan to pay the Board of Pharmacy the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 10. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 3/24/15



VIRGINIA HAROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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A C C U S A T I O N

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220 Tall Oak
20 Irvine, CA 92603

21 Pharmacist License No. RPH 44796

22 Respondents.

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25 Complainant alleges:

26 **PARTIES**

27 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
28 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

1 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
2 his or her education, training, or experience as a pharmacist, whether or not the act
3 or omission arises in the course of the practice of pharmacy or the ownership,
4 management, administration, or operation of a pharmacy or other entity licensed by
5 the board.

6 Acts or omissions that involve, in whole or in part, the failure to consult
7 appropriate patient, prescription, and other records pertaining to the performance of
8 any pharmacy function.

9 ...
10 13. Health and Safety Code section 11153(a) states:

11 A prescription for a controlled substance shall only be issued for a legitimate
12 medical purpose by an individual practitioner acting in the usual course of his or her
13 professional practice. The responsibility for the proper prescribing and dispensing of
14 controlled substances is upon the prescribing practitioner, but a corresponding
15 responsibility rests with the pharmacist who fills the prescription. Except as
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18 professional treatment or in legitimate and authorized research; or (2) an order for an
19 addict or habitual user of controlled substances, which is issued not in the course of
20 professional treatment or as part of an authorized narcotic treatment program, for the
21 purpose of providing the user with controlled substances, sufficient to keep him or
22 her comfortable by maintaining customary use.

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24 14. Section 1707.3 of title 16, California Code of Regulations states:

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26 patient's drug therapy and medication record before each prescription drug is
27 delivered. The review shall include screening for severe potential drug therapy
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Each pharmacy licensed by the board shall maintain its facilities, space, fixtures,
and equipment so that drugs are safely and properly prepared, maintained, secured
and distributed. The pharmacy shall be of sufficient size and unobstructed area to
accommodate the safe practice of pharmacy.

16. Section 1715.6 of title 16, California Code of Regulations states:

The owner shall report to the Board within thirty (30) days of discovery of any
loss of the controlled substances, including their amounts and strengths.

17. Section 1716 of title 16, California Code of Regulations states:

Pharmacists shall not deviate from the requirements of a prescription except
upon the prior consent of the prescriber or to select the drug product in accordance
with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising

1 commonly accepted pharmaceutical practice in the compounding or dispensing of a
2 prescription.

3 18. Section 1718 of title 16, California Code of Regulations states:

4 "Current Inventory" as used in Section 4081 and 4332 of the Business and
5 Professions Code shall be considered to include complete accountability for all
6 dangerous drugs handled by every licensee enumerated in Section 4081 and 4332.

7 The controlled substances inventories required by Title 21, CFR, Section 1304
8 shall be available for inspection upon request for at least three years.

9 19. Section 1761 of title 16, California Code of Regulations states:

10 (a) No pharmacist shall compound or dispense any prescription which contains
11 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
12 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to
13 obtain the information needed to validate the prescription.

14 (b) Even after conferring with the prescriber, a pharmacist shall not compound
15 or dispense a controlled substance prescription where the pharmacist knows or has
16 objective reason to know that said prescription was not issued for a legitimate
17 medical purpose.

18 COST RECOVERY

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

23 DRUGS

24 21. Dilaudid is the brand name for hydromorphone, a Schedule II controlled substance
25 pursuant to Health and Safety Code section 11054(b)(J) and a dangerous drug pursuant to
26 Business and Professions Code section 4022.

27 22. Norco is the brand name for hydrocodone/acetaminophen, a Schedule III controlled
28 substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
to Business and Professions Code section 4022.

29 23. Opana is the brand name for oxycodone hydrochloride, a Schedule II controlled
substance pursuant to Health and Safety Code section 11054(b)(N) and a dangerous drug pursuant
to Business and Professions Code section 4022.

1 not possess written authorization allowing those drivers to pick up the controlled substance
2 prescriptions for multiple patients. To facilitate the drug transactions with the drivers,
3 Respondents kept envelopes which contained prescriptions for controlled substances to be filled,
4 next to the cash register. Respondents telephoned the drivers to initiate a pick up when they had
5 filled all the multiple prescriptions for controlled substances. In that same drawer, Respondents
6 kept a pricing sheet for controlled substances and the telephone numbers of the drivers to further
7 facilitate these drug transactions with the drivers.

8 30. Respondents Cabrillo Park Pharmacy and James Gee placed orders for suspiciously
9 large amounts of controlled substances with their drug wholesaler. Notwithstanding those orders,
10 Respondents did not dispense all the prescriptions for controlled substances in a timely manner as
11 prescribed, because they sought to avoid charges that they were excessively prescribing controlled
12 substances from the Drug Enforcement Administration and the Board.

13 31. Respondents did not follow proper procedures for verifying if a prescription for a
14 controlled substance was written for a legitimate medical purpose. Indeed, Respondents
15 dispensed prescriptions to patients who had lost their wallets or social security cards and had been
16 victims of identity theft. And, Respondent's furnishings of controlled substances was higher than
17 neighboring pharmacies during the same time frame.

18 32. Respondents also had discrepancies in their drug inventory. From June 2012 through
19 January 2013, Respondents Cabrillo Park Pharmacy and James Gee suffered the following losses
20 of controlled substances: 734 tablets of hydrocodone/APAP 10mg/325mg and 20 tablets of
21 hydromorphone 4mg. They did not report those losses to the Board.

22 33. Respondents Cabrillo Park Pharmacy and James Gee's inventory contained overages
23 of 165 tablets of alprazolam 2mg and 152 tablets of oxycodone 30mg. Therefore, they did not
24 maintain complete records of acquisition for those controlled substances.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Current Inventory of Controlled Substance against Respondents**
3 **Cabrillo Park Pharmacy and James Gee)**

4 34. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
5 under Code section 4301(o), for violating title 16, California Code of Regulations, section 1718,
6 in that they did not maintain a current inventory of controlled substances, alprazolam, oxycodone,
7 hydrocodone/APAP and hydromorphone, and suffered losses in their inventory of
8 hydrocodone/APAP and hydromorphone, as set forth in paragraphs 26 through 33 above, which
9 are incorporated herein by reference.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Report Drug Losses against Respondents**
12 **Cabrillo Park Pharmacy and James Gee)**

13 35. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
14 under Code section 4301(o), for violating title 16, California Code of Regulations, section 1715.6,
15 in that they did not report the losses of controlled substances, hydrocodone/APAP and
16 hydromorphone to the Board, as set forth in paragraphs 26 through 33 above, which are
17 incorporated herein by reference.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Provide Adequate Security for Controlled Substance**
20 **against Respondents Cabrillo Park Pharmacy and James Gee)**

21 36. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
22 under Code section 4301(o), for violating title 16, California Code of Regulations, section
23 1714(b), in that they did not provide adequate security for controlled substances,
24 hydrocodone/APAP and hydromorphone, as set forth in paragraphs 26 through 33 above, which
25 are incorporated herein by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Acquisition)

37. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action under Code sections 4301(o), for violating Code section 4081(a), in that they failed to maintain all the records of acquisition for the controlled substances, alprazolam 2mg and oxycodone 30mg, as set forth in paragraphs 26 through 33, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Failing to Comply with Corresponding Responsibility

for Legitimate Controlled Substance Prescriptions against Respondents)

38. Respondents are subject to disciplinary action under Code section 4301(j), for violating Health and Safety Code section 11153(a), in that they failed to comply with their corresponding responsibility to ensure that controlled substances were dispensed for a legitimate medical purpose when Respondents furnished prescriptions for controlled substances even though "red flags" were present, indicating those prescriptions were not issued for a legitimate medical purpose, as set forth in paragraphs 26 through 33 above, which are incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,

Irregularities, Uncertainties, Ambiguities or Alterations against Respondents)

39. Respondents are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed prescriptions for controlled substances, which contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 26 through 33 above, which are incorporated herein by reference.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Review Patients' Medication Record Before Prescription Drugs Delivered**
3 **against Respondents)**

4 40. Respondents are subject to disciplinary action under Code section 4301(o), for
5 violating title 16, California Code of Regulations, section 1707.3, in that they dispensed
6 prescriptions for drugs, without review of patients' medication records before each prescription
7 drug was delivered. Such a review would have revealed numerous "red flags," as set forth in
8 paragraphs 26 through 33 above, which are incorporated herein by reference.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Dispensing Controlled Substances with Variations from Prescriptions against**
11 **Respondents Cabrillo Park Pharmacy and James Gee)**

12 41. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
13 under Code section 4301(o) for violating title 16, California Code of Regulations, section 1716, in
14 that they dispensed controlled substances which deviated from the requirements of the
15 prescriptions without the prior consent of the prescribers and dispensed controlled substances
16 when the prescriptions were prescribed by Dr. M.S. but signed by another physician, as set forth
17 in paragraphs 26 through 33, which are incorporated herein by reference.

18 **NINTH CAUSE FOR DISCIPLINE**

19 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding**
20 **Responsibility when Dispensing Controlled Substances**
21 **against Respondents James Gee and Soong Chang)**

22 42. Respondents James Gee and Soong Chang are subject to disciplinary action under
23 Code section 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in
24 that they failed to exercise or implement his or her best professional judgment or corresponding
25 responsibility when dispensing controlled substances, as set forth in paragraphs 26 through 33
26 above, which are incorporated herein by reference.

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TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct against Respondents James Gee and Soong Chang)

43. Respondents James Gee and Soong Chang are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 26 through 33 above, which are incorporated herein by reference.

DISCIPLINARY CONSIDERATIONS

44. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges:

a. On February 22, 2012, the Board issued Citation number CI 2011 49857 against Respondent Cabrillo Park Pharmacy for violating Business and Professions Code section 4126.5(a)(4) for improperly furnishing drugs to a wholesaler. The Board issued a fine which Respondent paid.

b. On February 23, 2012, the Board issued a Letter of Admonishment to Respondent James Gee for violating Business and Professions Code section 4126.5(a)(4) for improperly furnishing drugs to a wholesaler.

c. On March 10, 1999, the Board issued Citation Number CI 1996 14411 against Soong Chang for violating title 16, California Code of Regulations, section 1707.2 for failing to provide oral consultation to a patient. The Board issued a fine which Respondent paid.

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 Pharmacy Permit Number PHY 50066, issued to Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo Park Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 45540, issued to Soong OK Chang;
3. Revoking or suspending Pharmacist License Number RPH 44796, issued to James Ying-Ming Gee;

