

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

In the Matter of the Accusation Against:

Case No. 4981 and 5328

**ANH NGOC PHAN
11701 Steele Drive
Garden Grove, CA 92840**

Pharmacist License No. RPH 42197

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender Settlement and Disciplinary Order 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 April 20, 2017.

It is so ORDERED on March 21, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant

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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,**
13 **INC., DBA CABRILLO PARK**
14 **PHARMACY**
2212 East 4th Street #102
15 Santa Ana, CA 92705

OAH No. 2015100446

STIPULATED SURRENDER OF
LICENSE AND ORDER (ANH NGOC
PHAN)

16 Pharmacy Permit No. PHY 50066

17 **GEE'S HEALTHCARE PHARMACY,**
18 **INC., DBA YORBA PARK PHARMACY**
2501 E. Chapman Blvd., No. 106
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
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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 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
9 entitled proceedings that the following matters are true:

10 PARTIES

11 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of Pharmacy
12 (Board). She brought this action solely in her official capacity and is represented in this matter by
13 Xavier Becerra, Attorney General of the State of California, by Desiree I. Kellogg, Deputy
14 Attorney General.

15 2. Anh Ngoc Phan (Respondent Anh Phan) is represented in this proceeding by attorney
16 Brian P. Kamel of Kamel & Associates, whose address is 12400 Wilshire Boulevard, Suite 1150,
17 Los Angeles, California 90025.

18 3. On or about September 20, 1988, the Board issued Pharmacist License Number RPH
19 42197 to Respondent Anh Phan. The Pharmacist License was in full force and effect at all times
20 relevant to the charges brought in Second Amended Accusation Nos. 4981 and 5328, and will
21 expire on May 31, 2018, unless renewed.

22 JURISDICTION

23 4. Second Amended Accusation Nos. 4981 and 5328 was filed before the (Board), and
24 is currently pending against Respondent Anh Phan. The Second Amended Accusation and all
25 other statutorily required documents were properly served on Respondent Anh Phan on June 3,
26 2016. Respondent Anh Phan timely filed her Notice of Defense contesting the Second Amended
27 Accusation. A copy of Second Amended Accusation Nos. 4981 and 5328 is attached as Exhibit
28 A and incorporated by reference.

1 ADVISEMENT AND WAIVERS

2 5. Respondent Anh Phan has carefully read, fully discussed with counsel, and
3 understands the charges and allegations in Second Amended Accusation Nos. 4981 and 5328.
4 Respondent Anh Phan also has carefully read, fully discussed with counsel, and understands the
5 effects of this Stipulated Surrender of License and Order.

6 6. Respondent Anh Phan is fully aware of her legal rights in this matter, including the
7 right to a hearing on the charges and allegations in the Second Amended Accusation; the right to
8 confront and cross-examine the witnesses against her; the right to present evidence and to testify
9 on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses
10 and the production of documents; the right to reconsideration and court review of an adverse
11 decision; and all other rights accorded by the California Administrative Procedure Act and other
12 applicable laws.

13 7. Respondent Anh Phan voluntarily, knowingly, and intelligently waives and gives up
14 each and every right set forth above.

15 CULPABILITY

16 8. Respondent Anh Phan understands that the charges and allegations in Second
17 Amended Accusation Nos. 4981 and 5328, if proven at a hearing, constitute cause for imposing
18 discipline upon her Pharmacist License.

19 9. For the purpose of resolving the Second Amended Accusation without the expense
20 and uncertainty of further proceedings, Respondent Anh Phan agrees that, at a hearing,
21 Complainant could establish a factual basis for the charges in the Second Amended Accusation
22 and that those charges constitute cause for discipline. Respondent Anh Phan hereby gives up her
23 right to contest that cause for discipline exists based on those charges.

24 10. Respondent Anh Phan understands that by signing this stipulation enables the Board
25 to issue an order accepting the surrender of her Pharmacist License without further process.

26 CIRCUMSTANCES IN MITIGATION

27 11. Respondent Anh Phan is choosing to retire due to her age from the practice of
28 pharmacy after being licensed as a pharmacist since 1988.

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CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent Anh Phan understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent Anh Phan or her counsel. By signing the stipulation, Respondent Anh Phan understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 42197 issued to Respondent Anh Ngoc Phan, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent Anh Phan's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent Anh Phan's license history with the Board of Pharmacy.

1 2. Respondent Anh Phan shall lose all rights and privileges as a pharmacist in California
2 as of the effective date of the Board's Decision and Order.

3 3. Respondent Anh Phan shall cause to be delivered to the Board her pocket license and,
4 if one was issued, her wall certificate on or before the effective date of the Decision and Order.

5 4. If she ever applies for licensure or petitions for reinstatement in the State of
6 California, the Board shall treat it as a new application for licensure. Respondent Anh Phan must
7 comply with all the laws, regulations and procedures for licensure in effect at the time the
8 application or petition is filed, and all of the charges and allegations contained in Second
9 Amended Accusation Nos. 4981 and 5328 shall be deemed to be true, correct and admitted by
10 Respondent when the Board determines whether to grant or deny the application or petition.

11 5. Respondent Anh Phan shall pay the agency its costs of investigation and enforcement
12 in the amount of \$5,800.00 prior to issuance of a new or reinstated license.

13 6. If Respondent Anh Phan should ever apply or reapply for a new license or
14 certification, or petition for reinstatement of a license, by any other health care licensing agency
15 in the State of California, all of the charges and allegations contained in Second Amended
16 Accusation Nos. 4981 and 5328 shall be deemed to be true, correct, and admitted by Respondent
17 Anh Phan for the purpose of any Statement of Issues or any other proceeding seeking to deny or
18 restrict licensure.


19 7. Respondent Anh Phan may not apply, reapply, or petition for any licensure or
20 registration of the Board for three (3) years from the effective date of the Decision and Order.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Brian P. Kamel. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

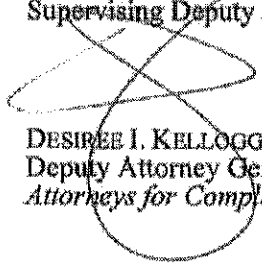
DATED: Feb 6 / 2017 
ANH NGOC PHAN
Respondent

I have read and fully discussed with Respondent Anh Ngoc Phan the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/6/17 
BRIAN P. KAMEL
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 2/7/17 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation Nos. 4981 and 5328

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Attorneys for Complainant
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9 **BEFORE THE**
BOARD OF PHARMACY
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12 **GEE'S HEALTHCARE PHARMACY, INC.,**
13 **DBA CABRILLO PARK PHARMACY**
2212 East 4th Street #102
14 Santa Ana, CA 92705

SECOND 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**
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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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7
8 Complainant alleges:

9 **PARTIES**

10 1. Virginia Herold (Complainant) brings this Second 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, 2017, 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, 2016, 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
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1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 April 30, 2017, 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, 2017, 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 Second 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.

...

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

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

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

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

Acts or omissions that involve, in whole or in part, the inappropriate exercise of
his or her education, training, or experience as a pharmacist, whether or not the act
or omission arises in the course of the practice of pharmacy or the ownership,
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 ...

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

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

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

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

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

23 A prescription for a controlled substance shall only be issued for a legitimate
24 medical purpose by an individual practitioner acting in the usual course of his or her
25 professional practice. The responsibility for the proper prescribing and dispensing of
26 controlled substances is upon the prescribing practitioner, but a corresponding
27 responsibility rests with the pharmacist who fills the prescription. Except as
28 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.

....

17. Health and Safety Code section 11164(a)(1) states:

Each prescription for a controlled substance classified in Schedule II, III, IV, or
V, except as authorized by subdivision (b), shall be made on a controlled substance
prescription form as specified in Section 11162.1 and shall meet the following
requirements: (1) the prescription shall be signed and dated by the prescriber in ink
and shall contain the prescriber's address and telephone number; the name of the
ultimate user or research subject, or contact information as determined by the
Secretary of United States Department of Health and Human Services; refill
information, such as the number of refills ordered and whether the prescription is a
first-time request or a refill; and the name, quantity, strength, and directions for use of

1 the controlled substance prescribed.

2 18. Section 1707.3 of title 16, California Code of Regulations states:

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

7 19. Sections 1714(b) and 1714(d) of title 16, California Code of Regulations states:

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

12 (d) Each pharmacist while on duty shall be responsible for the security of the
13 prescription department, including provisions for effective control against theft or
14 diversion of dangerous drugs and devices, and records for such drugs and devices.
15 Possession of a key to the pharmacy where dangerous drugs and controlled
16 substances are stored shall be restricted to a pharmacist.

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

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

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

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

24 Nothing in this regulation is intended to prohibit a pharmacist from exercising
25 commonly accepted pharmaceutical practice in the compounding or dispensing of a
26 prescription.

27 22. Section 1718 of title 16, California Code of Regulations states:

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

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

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

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

(b) Even after conferring with the prescriber, a pharmacist shall not compound

1 or dispense a controlled substance prescription where the pharmacist knows or has
2 objective reason to know that said prescription was not issued for a legitimate
3 medical purpose.

4 COST RECOVERY

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

9 DRUGS

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

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

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

19 28. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
20 section 11054(b)(M) and a dangerous drug pursuant to Business and Professions Code section
21 4022.

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

25 30. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
26 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
27 Professions Code section 4022.
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FACTUAL ALLEGATIONS

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

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

33. Respondents Yorba Park Pharmacy, James Gee, Soong Chang and Anh Phan filled prescriptions for controlled substances which were written by Dr. M.S. from June 21, 2012 through November 19, 2013. Dr. M.S.'s address was listed on the prescriptions filled by Respondents as being 51 miles away from Respondent Yorba Park Pharmacy. Respondent Yorba Park Pharmacy was an average of 55 miles (one way) from the patients' addresses listed on prescriptions written by Dr. M.S. who had a general practice with a secondary practice in pediatrics and did not specialize in pain management. Patients paid for the controlled substance prescriptions in cash at Respondent Yorba Park Pharmacy and did not seek reimbursement from

1 an insurance company or government agency. Patients filled prescriptions for controlled
2 substances prescribed by multiple physicians during the same time frame at multiple pharmacies.

3 34. Dr. M.S.'s prescriptions for controlled substances were written in an identical fashion
4 for multiple patients as follows: (1) hydrocodone/APAP 10/325, with directions to take 1-2
5 tablets three times a day in a quantity of 90-100; (2) alprazolam 2 mg with directions to take 1
6 tablet three times a day in a quantity of 90; and (3) oxycodone 30mg with directions to take 1
7 tablet three times a day in a quantity of 90. There was no adjustment in the prescribing pattern
8 for sex, age, weight, renal or hepatic function, race, diagnosis, past medications used or any other
9 patient related factor. None of the "chronic pain patients" being treated by Dr. M.S. were
10 receiving a long acting pain medication to control their baseline pain. Certain prescriptions filled
11 by Respondents Cabrillo Park Pharmacy, James Gee, Soong Chang and Anh Phan were not
12 signed by Dr. M.S. and other prescriptions were filled by them even though they were signed by a
13 physician who was not the prescribing physician.

14 35. Additionally, drivers picked up the controlled substances for multiple patients from
15 Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang, rather than the patients
16 themselves picking up their prescriptions. Respondents Cabrillo Park Pharmacy, James Gee and
17 Soong Chang did not possess written authorization allowing those drivers to pick up the
18 controlled substance prescriptions for patients. To facilitate the drug transactions with the
19 drivers, Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang kept envelopes
20 which contained prescriptions for controlled substances to be filled, next to the cash register.
21 Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang telephoned the drivers to
22 initiate a pick up when they had filled all the multiple prescriptions for controlled substances. In
23 that same drawer, Respondents Cabrillo Park Pharmacy, James Gee and Soong Chang kept a
24 pricing sheet for controlled substances and the telephone numbers of the drivers to further
25 facilitate these drug transactions with the drivers.

26 36. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee placed
27 orders for suspiciously large amounts of controlled substances with their drug wholesalers.
28 Notwithstanding those orders, Respondents Cabrillo Park Pharmacy and James Gee did not

1 dispense all the prescriptions for controlled substances in a timely manner as prescribed, because
2 they sought to avoid charges that they were excessively prescribing controlled substances from
3 the Drug Enforcement Administration and the Board.

4 ~~37. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy, James Gee, Soong~~
5 Chang and Anh Phan did not follow proper procedures for verifying if a prescription for a
6 controlled substance was written for a legitimate medical purpose. Indeed, Respondents Cabrillo
7 Park Pharmacy, Yorba Park Pharmacy, James Gee, Soong Chang and Anh Phan dispensed
8 prescriptions to patients who had lost their wallets or social security cards and had been victims
9 of identity theft. And, Respondents' furnishings of controlled substances was higher than
10 neighboring pharmacies during the same time frame.

11 38. On or about February 6, 2014, Dr. M.S. was arrested for violating Business and
12 Professions Code section 2052(b), Health and Safety Code section 11353(a), 11353(c) and 11354.
13 On or about February 10, 2014, a felony Complaint was filed against Dr. M.S. for violating those
14 code sections, among other violations. On or about March 12, 2015, in a criminal proceeding
15 entitled *People of the State of California vs. M.S., etc., et al.*, Superior Court of California for the
16 County of Ventura, case number 2014004170, Dr. M.S. pled guilty to a violation of Health and
17 Safety Code section 11154, subdivision (b), aiding unlawful prescription of a control substance, a
18 felony, and a violation of Health and Safety Code section 11352, subdivision (a), sale of a
19 controlled substance, also a felony. The factual circumstances of his conviction included
20 providing to his co-defendants numerous pads of blank controlled substance prescriptions, which
21 were pre-signed by him, and/or a Nurse Practitioner working under Dr. M.S.' direct supervision.
22 Patient information, various controlled substance names and amounts were later written on those
23 blank prescriptions by Dr. M.S.' associates, who were not licensed medical professionals, and
24 sold for cash to "patients" without any medical examination or medical indication whatsoever.

25 39. Respondents Cabrillo Park Pharmacy and James Gee also had discrepancies in their
26 drug inventory. Respondents Cabrillo Park Pharmacy and James Gee did not maintain a lockable
27 storage cabinet for controlled substances. Instead, controlled substances were stored inside a
28 desk located in the pharmacy's offices. From June 2012 through January 2013, Respondents

1 Cabrillo Park Pharmacy and James Gee suffered the following losses of controlled substances:
2 734 tablets of hydrocodone/APAP 10mg/325mg and 20 tablets of hydromorphone 4mg. They did
3 not report those losses to the Board.

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

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

13 42. Discrepancies in Respondent Yorba Park Pharmacy's inventory of controlled
14 substances continued. On April 7, 2015, the Board received a report of theft or loss of controlled
15 substances (211 tablets of acetaminophen/codeine #3), DEA Form 106 from Respondent Yorba
16 Park Pharmacy. On May 19, 2015, the Board conducted an inspection of Respondent Yorba Park
17 Pharmacy and observed that the pharmacy had a cabinet containing controlled substances which
18 was routinely kept unlocked during business hours, despite being advised by the pharmacy's
19 consultant to keep that cabinet locked when unattended by a pharmacist. The Board inspector
20 also advised Respondent James Gee to keep the cabinet containing controlled substances locked
21 when unattended. There was also no security camera recording activity around the cabinet
22 containing controlled substances or near the containers. The Board inspector conducted an audit
23 of Respondent Yorba Park Pharmacy's inventory of acetaminophen/codeine #3 and discovered a
24 shortage of 548 tablets of acetaminophen/codeine 300/30mg tablets from August 19, 2014
25 through April 11, 2015, rather than 211 tablets reported on the DEA Form 106.

26 43. Discrepancies in Respondent Yorba Park Pharmacy's inventory of controlled
27 substances continued. On February 26, 2016, the Board received a report of theft or loss of two
28 controlled substances (607ml of promethazine with codeine and 1,316ml Guaifenesin with

1 codeine syrup), DEA Form 106 from Respondent Yorba Park Pharmacy. On March 8, 2016, the
2 Board conducted an inspection of Respondent Yorba Park Pharmacy and observed that the
3 pharmacy had a cabinet containing controlled substances which was routinely kept unlocked
4 during business hours, despite the admonishments referenced in paragraph 41 to keep the cabinet
5 locked when unattended by a pharmacist. The Board inspector conducted an audit of Respondent
6 Yorba Park Pharmacy's inventory of oxycodone 30mg, hydrocodone/APAP 10mg/325mg,
7 alprazolam 2mg and promethazine with codeine and discovered an overage of promethazine with
8 codeine of 4,345mls and shortages of 250 tablets of oxycodone 30mg, 11,848 tablets of
9 hydrocodone/APAP 10mg/325mg and 271 tablets of alprazolam 2mg from December 3, 2013
10 through March 7, 2016. From April 11, 2015 through March 8, 2016, there was an overage of 41
11 tablets of alprazolam 2mg and losses of 1,052 tablets of hydrocodone/APAP 10mg/325mg and
12 197 mls of promethazine with codeine.

13 44. In March 2016, Respondents Yorba Park Pharmacy and James Gee also filled five
14 prescriptions for controlled substances which were not signed by the prescribers and dated in ink
15 in violation of Respondent Yorba Park Pharmacy's controlled substances policies and procedures.
16 Respondents Yorba Park Pharmacy and James Gee also failed to query the CURES database to
17 establish patients' utilization patterns for particular drugs, as required by Respondent Yorba Park
18 Pharmacy's controlled substances policies and procedures.

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 45. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee are
23 subject to disciplinary action under Code section 4301(o), for violating Code section 4081(a) and
24 title 16, California Code of Regulations, section 1718, in that they did not maintain a current
25 inventory of controlled substances, alprazolam, oxycodone, hydrocodone/APAP, hydromorphone,
26 and promethazine with codeine and suffered losses in their inventory of alprazolam, oxycodone,
27 hydrocodone/APAP, hydromorphone, Guaifenesin with codeine syrup, acetaminophen/codeine
28

1 and promethazine with codeine, as set forth in paragraphs 31 through 44 above, which are
2 incorporated herein by reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Report Drug Losses against Respondents**

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

6 46. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee are
7 subject to disciplinary action under Code section 4301(o), for violating title 16, California Code
8 of Regulations, section 1715.6, in that Cabrillo Park Pharmacy and James Gee did not report the
9 losses of hydrocodone/APAP and hydromorphone and Yorba Park Pharmacy and James Gee did
10 not report the losses of alprazolam, oxycodone, hydrocodone/APAP and promethazine with
11 codeine to the Board, as set forth in paragraphs 31 through 44 above, which are incorporated
12 herein by reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Provide Adequate Security for Controlled Substance**

15 **against Respondents Yorba Park Pharmacy, Cabrillo Park Pharmacy and James Gee)**

16 47. Respondents Cabrillo Park Pharmacy, Yorba Park Pharmacy and James Gee are
17 subject to disciplinary action under Code section 4301(o), for violating title 16, California Code
18 of Regulations, sections 1714(b) and (d), in that Cabrillo Park Pharmacy and James Gee did not
19 provide adequate security for hydrocodone/APAP and hydromorphone and Yorba Park Pharmacy
20 and James Gee did not provide adequate security for alprazolam, oxycodone,
21 hydrocodone/APAP, acetaminophen/codeine, Guaifenesin with codeine syrup and promethazine
22 with codeine, as set forth in paragraphs 31 through 44 above, which are incorporated herein by
23 reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Records of Acquisition against Respondents Cabrillo Park Pharmacy**
26 **and James Gee)**

27 48. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
28 under Code section 4301(o), for violating Code section 4081(a), in that they failed to maintain all

1 the records of acquisition for the controlled substances, alprazolam 2mg and oxycodone 30mg, as
2 set forth in paragraphs 31 through 44, which are incorporated herein by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

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

6 49. Respondents are subject to disciplinary action under Code section 4301(j), for
7 violating Health and Safety Code section 11153(a), in that they failed to comply with their
8 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
9 medical purpose when Respondents furnished prescriptions for controlled substances even though
10 "red flags" were present, indicating those prescriptions were not issued for a legitimate medical
11 purpose, as set forth in paragraphs 31 through 44 above, which are incorporated herein by
12 reference.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 50. Respondents are subject to disciplinary action under Code section 4301(d), for the
16 clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section
17 11153 of the Health and Safety Code, as set forth in paragraphs 31 through 44 above, which are
18 incorporated herein by reference.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**

21 **Irregularities, Uncertainties, Ambiguities or Alterations against Respondents)**

22 51. Respondents are subject to disciplinary action under Code section 4301(o), for
23 violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed
24 prescriptions for controlled substances, which contained significant errors, omissions,
25 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 31 through 44
26 above, which are incorporated herein by reference.

1 EIGHTH CAUSE FOR DISCIPLINE

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

4 52. 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 31 through 44 above, which are incorporated herein by reference.

9 NINTH CAUSE FOR DISCIPLINE

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

12 53. 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 31 through 44, which are incorporated herein by reference.

18 TENTH CAUSE FOR DISCIPLINE

19 (Dispensing Controlled Substances without Compliant Prescriptions against
20 Respondents Cabrillo Park Pharmacy and James Gee)

21 54. Respondents Cabrillo Park Pharmacy and James Gee are subject to disciplinary action
22 under Code section 4301(j) for violating Health and Safety Code section 11164(a)(1), in that they
23 dispensed controlled substances which from prescriptions which lacked the signature of the
24 prescriber and the date in ink, as set forth in paragraphs 31 through 44, which are incorporated
25 herein by reference.
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ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Exercise or Implement Best Professional Judgment or Corresponding Responsibility when Dispensing Controlled Substances against Respondents James Gee Soong Chang and Anh Phan)

55. Respondents James Gee, Soong Chang and Anh Phan are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that they failed to exercise or implement his or her best professional judgment or corresponding responsibility when dispensing controlled substances, as set forth in paragraphs 31 through 44 above, which are incorporated herein by reference.

TWELFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct against Respondents)

56. Respondents are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 31 through 44 above, which are incorporated herein by reference.

OTHER MATTERS

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

58. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Numbers PHY 45771 issued to Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy and PHY 50066 issued to Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo Park Pharmacy while James Ying-Ming Gee has been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, James Ying-

1 Ming Gee shall be prohibited from serving as a manager, administrator, owner, member, officer,
2 director, associate, or partner of a licensee for five years if Pharmacy Permit Numbers PHY
3 45771 and PHY 50066 are placed on probation or until Pharmacy Permit Numbers PHY 45771
4 and PHY 50066 are reinstated if they are revoked.

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

10 DISCIPLINARY CONSIDERATIONS

11 60. To determine the degree of discipline, if any, to be imposed on Respondents,
12 Complainant alleges that on February 22, 2012, the Board issued Citation number CI 2011 49857
13 against Respondent Cabrillo Park Pharmacy for violating Business and Professions Code section
14 4126.5(a)(4) for improperly furnishing drugs to a wholesaler. The Board issued a fine which
15 Respondent paid.

16 PRAYER

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

- 19 1. Revoking or suspending Pharmacy Permit Number PHY 45771, issued to Gee's
20 Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy;
- 21 2. Revoking or suspending Pharmacy Permit Number PHY 50066, issued to Gee's
22 Healthcare Pharmacy, Inc., doing business as Cabrillo Park Pharmacy;
- 23 3. Revoking or suspending Pharmacist License Number RPH 44796, issued to James
24 Ying-Ming Gee;
- 25 4. Revoking or suspending Pharmacist License Number RPH 45540, issued to Soong
26 OK Chang;
- 27 5. Revoking or suspending Pharmacist License Number RPH 42197, issued to Ang
28 Ngoc Phan;

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

8 7. Prohibiting James Ying-Ming Gee from serving as a manager, administrator, owner,
9 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
10 Numbers PHY 45771 and PHY 50066 are placed on probation or until Pharmacy Permit
11 Numbers PHY 45771 and PHY 50066 are reinstated if Pharmacy Permit Numbers 45771 and
12 5006 issued to Gee's Healthcare Pharmacy, Inc. doing business as Cabrillo Park Pharmacy and
13 Yorba Park Pharmacy are revoked;

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

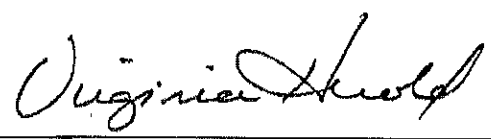
19 9. Ordering Gee's Healthcare Pharmacy, Inc., doing business as Cabrillo Park
20 Pharmacy, Ordering Gee's Healthcare Pharmacy, Inc., doing business as Yorba Park Pharmacy
21 James Ying-Ming Gee, Soong OK Chang and Anh Ngoc Phan to pay the Board of Pharmacy the
22 reasonable costs of the investigation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

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

DATED: 6/3/16



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

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JUN 28 2016

VIC 19

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

In the Matter of the Accusation Against:

Case Nos. 4981 and 5328

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

OAH No. 2015100446

Pharmacy Permit No. PHY 50066

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

Pharmacy Permit No. PHY 45771

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

Pharmacist License No. RPH 44796

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

Pharmacist License No. RPH 45540

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

Pharmacist License No. RPH 42197

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on _____.

It is so ORDERED _____.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS